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9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 73, No. 183

Friday, September 19, 2008

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54402–54405

Agricultural Research Service
RULES
General Administrative Policy for Non-Assistance Cooperative Agreements, 54291–54305

Agriculture Department
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Risk Management Agency
See Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54359–54360

Animal and Plant Health Inspection Service
NOTICES
Genetically Engineered Animals, 54360–54361

Army Department
See Engineers Corps
NOTICES
Availability of Non-Exclusive, Exclusive Licenses or Partially Exclusive Licensing of U.S. Patent:
Combined Skirt-Reefing and Slider Method for Controlling Parachute Opening, 54390–54391
Environmental Impact Statements; Availability, etc.:
Disposal and Reuse of Fort Monroe, VA, 54391

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54405

Coast Guard
RULES
Temporary Safety Zone:
Wreckage of the M/V NEW CARISSA, Pacific Ocean 3 Nautical Miles North of the Entrance to Coos Bay, OR, 54315–54317

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions, 54365–54366
Procurement List; Proposed Additions and Deletions, 54366

Committee for the Implementation of Textile Agreements
NOTICES
Dominican Republic-Central America-United States Free Trade Agreement; Determination under the Textile and Apparel Commercial Availability Provision, 54386–54387

Defense Department
See Army Department
See Engineers Corps
NOTICES
Manual for Courts-Martial; Proposed Amendments; Public Meeting, 54387–54390

Drug Enforcement Administration
NOTICES
List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine; Proposed 2009 Assessment of Annual Needs, 54431–54432

Employment and Training Administration
NOTICES
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance, 54432–54433

Energy Department
See Federal Energy Regulatory Commission
RULES
Coordination of Federal Authorizations for Electric Transmission Facilities
Coordination of Federal Authorizations for Electric Transmission Facilities, 54456–54460
PROPOSED RULES
Coordination of Federal Authorizations for Electric Transmission Facilities, 54461–54465

Engineers Corps
NOTICES
Meetings:
Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin in Georgia, Florida, and Alabama, 54391–54392

Environmental Protection Agency
NOTICES
Environmental Impact Statements; Availability:
Comments Availability, 54396–54397
Weekly Receipt, 54397
Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of Clean Water Act:
Proposed Yazoo Backwater Area Pumps Project in Issaquena County, MS, 54398–54400
Human Health Risk Assessments of Pathogens in Land-applied Biosolids; Draft Problem Formulation, 54400–54401

Meetings:
Ozone Transport Commission, 54401

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes, 54448–54449
Waiver of Aeronautical Land-Use Assurance:
Mansfield Lahm International Airport, Mansfield, OH, 54449–54450

Federal Communications Commission
RULES
Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, etc., 54324
Television Broadcasting Services:
Castle Rock, CO, 54324

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 54321–54324
NOTICES
Emergency and Related Determinations:
Louisiana, 54414–54415
Emergency Declaration:
Florida, 54415
Louisiana, 54415–54416
Mississippi, 54414
Texas, 54416
Major Disaster Declaration:
Florida, 54416–54417
Kansas, 54417
Louisiana, 54417–54418
Missouri, 54418
Texas, 54418–54419

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54392–54393
Environmental Impact Statements; Availability, etc.:
Southern California Edison; Big Creek Projects, 54393–54394
Texas Eastern Transmission, LP; Northern Bridge Project:, 54394–54395
Filings:
Florida Gas Transmission Co., LLC, 54395
Meetings; Sunshine Act; Correction, 54395
Petition for Rate Approval:
Northern Illinois Gas Co., 54395–54396
Request Under Blanket Authorization:
El Paso Natural Gas Co., 54396

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Kern County, CA; Centennial Corridor Highway Project, 54450–54451
Final Federal Agency Actions on Proposed Highway in California, 54451–54452

Federal Housing Financing Agency
RULES
Golden Parachute Payments and Indemnification Payments, 54309

Federal Reserve System
RULES
Transactions Between Member Banks and Their Affiliates:
Exemption for Certain Securities Financing Transactions Between a Member Bank and an Affiliate, 54307–54309

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Listing the Plant Lepidium papilliferum (Slickspot Peppergrass) as Endangered, 54345–54346
NOTICES
Endangered and Threatened Species Permit Applications, 54423–54424
Meetings:
Wind Turbine Guidelines Advisory Committee, 54424

Food and Drug Administration
RULES
FDA Regulations; Technical Amendment; Correction, 54314
NOTICES
Biologics Industry; Public Workshop:
Structured Product Labeling Content of Labeling and Electronic Drug Establishment Registration and Drug Listing, 54405–54406
Draft Guidance for Industry and Food and Drug Administration Staff:
Clinical Investigations of Devices Indicated for the Treatment of Urinary Incontinence, 54406–54407
Guidance for Industry:
Regulation of Genetically Engineered Animals Containing Heritable rDNA Constructs; Availability, 54407–54408

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission; 2nd Session of the Codex ad hoc Intergovernmental Task Force on Antimicrobial Resistance, 54361–54362

Foreign Assets Control Office
NOTICES
Foreign Narcotics Kingpin Designation Act; Additional Designations, 54453–54454

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Day Use on Urban National Forests, 54362–54363
Meetings:
Roadless Area Conservation National Advisory Committee, 54363
Revised Land and Resource Management Plan:
Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands; Oklahoma, Texas, and New Mexico, 54363–54364

General Services Administration
RULES
Acquisition Regulation:
Cooperative Purchasing-Acquisition of Security and Law Enforcement Goods and Services by State and Local Governments Through Federal Supply Schedules, 54334–54339
NOTICES
Federal Management Regulation:
Motor Vehicle Management; Notice of GSA Bulletin (FMR B19), 54401–54402

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54424–54425
Privacy Act; Systems of Records, 54425–54428

Government Printing Office
NOTICES
Meetings:
Depository Library Council to the Public Printer, 54402

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

Historic Preservation, Advisory Council
NOTICES
Department of Defense Rehabilitation Treatment Measures; Draft Program Comment, 54356–54359

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
See U.S. Customs and Border Protection
NOTICES
Meetings:
National Infrastructure Advisory Council, 54412–54413
Senior Executive Service Performance Review Boards; Members, 54413–54414

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 54423

Indian Affairs Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Riverton Dome Coal Bed Natural Gas and Conventional Gas Development, Wind River Indian Reservation, Fremont County, WY, 54428–54429

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Amended Final Results Pursuant to Final Court Decision:
Honey from the People's Republic of China, 54366–54367
Preliminary Affirmative Countervailing Duty Determination, etc.:
Citric Acid and Certain Citrate Salts from the People's Republic of China, 54367–54384

Justice Department
See Drug Enforcement Administration
NOTICES
Consent Decree:
Broderick Investment Co., 54430
Newmont Capital Limited and Newmont Mining Corporation of Canada Ltd., 54430–54431

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 54429

Mine Safety and Health Administration
NOTICES
Petitions for Modification of Existing Mandatory Safety Standards, 54433–54434

National Aeronautics and Space Administration
PROPOSED RULES
NASA Mentor-Protege Program, 54340–54345

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 54408–54411
National Institute on Aging, 54411–54412
National Institute on Deafness and Other Communication Disorders, 54412

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Bering Sea and Aleutian Islands Crab Rationalization Program, 54346–54355
NOTICES
Environmental Impact Statements; Availability, etc.:
Atlantic Highly Migratory Species; Essential Fish Habitat, 54384–54386
Marine Mammals:
Issuance of Permit Amendment, 54386
Meetings:
New England Fishery Management Council; Cancellation, 54386

National Park Service
RULES
Special Regulation; Areas of the National Park System, 54317–54321
NOTICES
Environmental Impact Statements; Availability, etc.:
Chattahoochee River National Recreation Area General Management Plan, GA, 54429–54430
Meetings:
Selma to Montgomery National Historic Trail Advisory Council, 54430

National Science Foundation
NOTICES
Meetings; Sunshine Act, 54434–54435

National Telecommunications and Information Administration

RULES
Digital-to-Analog Converter Box Coupon Program:
Household Eligibility and Application Process for Individuals Residing in Nursing Homes, Intermediate Care Facilities, etc., 54325–54334

Nuclear Regulatory Commission
NOTICES
Environmental Impact Statements; Availability, etc.:
In-Situ Leach Uranium Milling Facilities; Correction, 54435–54436
Southern Nuclear Operating Co.; Vogtle Electric Generating Plant Site, GA, 54436
Meetings:
Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures, 54436–54437
Receipt of an Application to Transfer the Control of Special Nuclear Materials License, 54437–54439

Occupational Safety and Health Administration
PROPOSED RULES
General Working Conditions in Shipyard Employment; Informal Public Hearing, 54340

Pipeline and Hazardous Materials Safety Administration
NOTICES
Applications for Special Permits, 54452–54453

Postal Regulatory Commission
PROPOSED RULES
Accounting and Periodic Reporting Rules, 54468–54482

Presidential Documents
PROCLAMATIONS
Special obersvances:
National Constitution Day and Citizenship Day, Constitution Week (Proc. 8289), 54289–54290
Special observances:
National POW/MIA Recognition Day (Proc. 8290), 54483–54486

Risk Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54364–54365

Rural Business-Cooperative Service
RULES
Intermediary Relending Program, 54305–54307

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54439–54440
Orders of Suspension of Trading:
EA Industries, Inc., Ebiz Enterprises, Inc., and Einstein Noah Bagel Corp. (n/k/a ENBC Corp.), 54440
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 54440–54442
New York Stock Exchange LLC, 54442–54446
NYSE Arca, Inc., 54446–54448

State Department
RULES
International Traffic in Arms Regulations:
U.S. Munitions List Interpretation, 54314–54315

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
TSA Airspace Waiver Program, 54419–54420

Treasury Department
See Foreign Assets Control Office
RULES
Archaeological Material from Cambodia; Extension of Import Restrictions Imposed, 54309–54313
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54453

U.S. Customs and Border Protection
RULES
Archaeological Material from Cambodia; Extension of Import Restrictions Imposed, 54309–54313
NOTICES
Ground Fault Circuit Interrupter; Issuance of Final Determinations, 54420–54423

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54454

Separate Parts In This Issue

Part II
Energy Department, 54456–54465

Part III
Postal Regulatory Commission, 54468–54482

Part IV
Executive Office of the President, Presidential Documents, 54483–54486

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8289.....54289
8290.....54485

7 CFR

550.....54291
1951.....54305
4274.....54305

10 CFR

900.....54456

Proposed Rules:

900.....54461

12 CFR

223.....54307
1231.....54309

19 CFR

12.....54309

21 CFR

16.....54314
610.....54314
640.....54314
812.....54314
814.....54314
822.....54314
860.....54314

22 CFR

121.....54314

29 CFR

Proposed Rules:

1910.....54340
1915.....54340

33 CFR

165.....54315

36 CFR

7.....54317

39 CFR

Proposed Rules:

3060.....54468

44 CFR

65.....54321

47 CFR

27.....54324
73.....54324
301.....54325

48 CFR

511.....54334
516.....54334
532.....54334
538.....54334
546.....54334
552.....54334

Proposed Rules:

1819.....54340
1852.....54340

50 CFR

Proposed Rules:

17.....54345
680.....54346

Federal Register
Vol. 73, No. 183
Friday, September 19, 2008

Presidential Documents

Title 3—

The President

Proclamation 8289

Constitution Day and Citizenship Day, Constitution Week, 2008

By the President of the United States of America

A Proclamation

Americans are united by the ideals of equal justice, limited government, and the rule of law. On Constitution Day and Citizenship Day and during Constitution Week, we remember the vision and determination of the Framers to build a free society, and we celebrate the historical document they created to achieve that goal.

More than two centuries ago, our Founding Fathers gathered in Philadelphia and produced a charter that would promote justice and preserve the liberty of all our citizens. The Founders established three separate branches of Government with a system of checks and balances among them. Ours is the oldest written constitution in the world, and the American experiment remains the world's best hope for freedom.

The Constitution forged the American creed of liberty and equality and has lifted the lives of countless individuals. Whether they are citizens by birth or by oath, Americans share a great tradition of enjoying liberty protected by a constitutional government of their choosing.

On Constitution Day and Citizenship Day, and during Constitution Week, Americans come together and recognize the blessings bestowed upon our great Nation. On this occasion we celebrate the courage of the Constitution's drafters and recommit ourselves to making the United States a more perfect union.

In recognition of the signing of the Constitution and of Americans who strive to fulfill the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106, as amended), designated September 17 as ''Constitution Day and Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108, as amended), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 17, 2008, as Constitution Day and Citizenship Day, and September 17 through September 23, 2008, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that celebrate our Constitution and reaffirm our rights and responsibilities as citizens of this great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.



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Rules and Regulations

Federal Register
Vol. 73, No. 183
Friday, September 19, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 550

RIN–0518–AA03

General Administrative Policy for Non-Assistance Cooperative Agreements

AGENCY: Agricultural Research Service, REE, USDA.

ACTION: Final rule.

SUMMARY: This Part establishes uniform guidelines within the Research, Education, and Economics (REE) mission area on the use, award, and administration of cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

DATES: *Effective Date:* October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Kim Hicks, (301) 504–1141.

SUPPLEMENTARY INFORMATION:

Background

Section 1424 of the Food Security Act of 1985, Public Law No. 99–198, amended Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(b)) to authorize the Secretary to use a cooperative agreement as a legal instrument reflecting a relationship between the Secretary and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal or private agency or organization, individual, or any other party, if the Secretary determines (a) the objectives of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, and teaching activities, including statistical reporting; and (b) all parties will contribute resources to the accomplishment of those objectives.

The cooperative agreements authorized by 7 U.S.C. 3318(b) have been determined to be neither procurement nor assistance in nature and, therefore, not subject to the provisions of Federal Grant and Cooperative Agreement Act of 1977. These cooperative agreements are exempt from Department of Agriculture (USDA) rules and regulations promulgated at 7 CFR 3015, 3016, and 3019. The agreements covered by this rule are characterized by mutual interest and benefit to both parties, and reflect the unique cooperative relationship that exists between the REE agencies and the various public and private organizations engaged in the conduct of agricultural research, extension, and teaching activities.

Although the nonassistance cooperative agreements described in this rule are substantively different than the Federal assistance-type cooperative agreements used by most Federal awarding agencies and are not subject to the grants management Common Rule found at 2 CFR 215, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' REE has decided to apply many of the provisions of the Common Rule as a matter of good business practice. Many of the standards and provisions of the Common Rule have been adopted in whole or in part in the proposed rule because they embody principles of good management and sound financial stewardship important to all Federal assistance and nonassistance awards. Additionally, we have included by reference specific provisions of other Federal assistance-type or procurement guidance documents such as 7 CFR 3052, 42 U.S.C. 6962, and the Cash Management Improvement Act, codified at 31 CFR part 205, for the same reasons.

Comments

On September 21, 2006, the Office of Management and Budget (OMB) reviewed the workplan on the proposed rule and determined the docket to be not significant. The proposed rule was published in the **Federal Register** on July 26, 2007, and the comment period ended on September 24, 2007.

We received two comments; one comment that was irrelevant to the proposed rule and one comment from the University of California, Oakland, California.

The University of California welcomed the proposed rule and commended the Agency for its efforts, especially with regard to explicit adoption of some of the prior approval authorities consistent with OMB Circular A–21. The University expressed concerns with regard to resource contributions and payment frequency. These concerns are duly noted. However, ARS implemented the same guidelines for resource contributions and payment frequency as part of the general provisions governing all ARS ''Non-assistance Cooperative Agreements'' on September 1, 2004. The same requirements are stated verbatim in the proposed rule. ARS and the University have cooperated successfully under these guidelines for nearly four years with minimal disruption to routine business operations. Therefore, ARS is making no changes to the final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866.

Executive Order 12372

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance (CFDA) under the following CFDA numbers: The Agricultural Research Service found at 10.001; the Economics Research Service found at 10.250; and the National Agricultural Statistics Service found at 10.950.

Because this rule does not authorize any programs or program expenditures, this notice is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule, (1) State and local laws and regulations will not 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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule will be submitted for approval to OMB.

List of Subjects in Part 550

Agricultural research, Non-assistance, Procedural rules, Research, Science and technology.

■ For the reasons stated in the preamble, the Department of Agriculture, Agriculture Research Service, amends 7 CFR chapter V by adding part 550 as set forth below.

PART 550—GENERAL ADMINISTRATIVE POLICY FOR NON-ASSISTANCE COOPERATIVE AGREEMENTS

Subpart A—General

Sec.

550.1 Purpose and scope.
550.2 Definitions.
550.3 Applicability.
550.4 Eligibility.
550.5 Competition.
550.6 Duration.
550.7 Exceptions.
550.8 Conflicting policies and deviations.
550.9 Other applicable regulations.
550.10 Special Award Conditions.

Subpart B—Formation of Agreements

550.11 Purpose.
550.12 Statutory authorization required (REE Agency).
550.13 Mutuality of interest.
550.14 Indirect costs/tuition remission.
550.15 Resource contribution.
550.16 Project development.
550.17 Peer review.
550.18 Assurances/certifications.

Subpart C—Management of Agreements

Financial Management

550.19 Purpose.
550.20 Standards for financial management systems.
550.21 Funding availability.
550.22 Payment.
550.23 Program income.
550.24 Non-Federal audits.
550.25 Allowable costs.

Program Management

550.26 Monitoring program performance.
550.27 Prior approvals.
550.28 Publications and acknowledgement of support.
550.29 Press releases.
550.30 Advertising.
550.31 Questionnaires and survey plans.
550.32 Project supervision and responsibilities.
550.33 Administrative supervision.
550.34 Research misconduct.
550.35 Rules of the workplace.

Equipment/Property Standards

550.36 Purpose of equipment/property standards.
550.37 Title to equipment.
550.38 Equipment.
550.39 Equipment replacement insurance
550.40 Supplies and other expendable property.
550.41 Federally owned property.
550.42 Intangible property.

Procurement Standards

550.43 Purpose of procurement standards.
550.44 Cooperator responsibilities.
550.45 Standards of conduct.
550.46 Competition.
550.47 Cost and price analysis.
550.48 Procurement records.
550.49 Contract administration.
550.50 Contract provisions.

Reports and Records

550.51 Purpose of reports and records.
550.52 Reporting program performance.
550.53 Financial reporting.
550.54 Invention disclosure and utilization reporting.
550.55 Retention and access requirements for records.

Suspension, Termination and Enforcement

550.56 Purpose of suspension, termination, and enforcement.
550.57 Suspension and termination.
550.58 Enforcement.

Subpart D—Close Out

550.59 Purpose.
550.60 Closeout procedures.
550.61 Subsequent adjustments and continuing responsibilities.
550.62 Collection of amounts due.

Authority: Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(b)).

Subpart A—General

§ 550.1 Purpose and scope.

This Part establishes REE-wide standards of USDA's award and administration of non-assistance cooperative agreements executed under the authority of Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(b)). These agreements are neither procurement nor assistance in nature, and therefore, are not subject to the Federal Grant and Cooperative Agreements Act of 1977. Accordingly, proper use of these cooperative agreements will promote and facilitate partnerships between the REE Agency and the Cooperator in support of research, extension and education projects of mutual benefit to each party.

§ 550.2 Definitions.

Accrued expenditures means the charges incurred by the Cooperator during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Cooperator's regular accounting practices.

Advance means a payment made to a Cooperator upon its request either before outlays are made by the Cooperator or through the use of predetermined payment schedules.

Authorized Departmental Officer (ADO) means the REE Agency's official delegated authority to negotiate, award, administer, suspend, and terminate non-assistance cooperative agreements.

Authorized Departmental Officer's Designated Representative (ADODR) means the REE Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of a cooperative agreement's objectives and monitoring and evaluating the Cooperator's performance.

Award means a non-assistance cooperative agreement which provides money or in-kind services or property in lieu of money, to an eligible Cooperator. The term does not include: Financial assistance awards in the form of grants, cooperative agreements, loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and contracts which are required to be entered into and administered under procurement laws and regulations.

CFR means the Code of Federal Regulations.

Closeout means the process by which a REE Agency determines that all applicable administrative actions and all required work under the agreement has been completed by the Cooperator and REE Agency.

Contract means a procurement contract entered into by the cooperator or a subcontractor of the cooperator pursuant to the cooperative agreement.

Cooperator means any State agricultural experiment station, State cooperative extension service, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other party, either foreign or domestic, receiving an award from a REE Agency.

Disallowed costs means those charges incurred under the cooperative agreement that REE determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the cooperative agreement.

Electronic Funds Transfer (EFT) means electronic payment methods used to transfer funds to a Cooperator's bank account (including HHS/PMS).

Equipment means tangible nonexpendable personal property contributed or acquired by either an REE Agency or by the Cooperator, having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with Cooperator policy, lower limits may be established.

Funding period means the period of time when Federal funding is available for obligation by the Cooperator.

HHS–PMS means the Department of Health and Human Services/Payment Management System (also see EFT).

i-Edison (Interagency Edison) is a database, which provides Federal grantee/Cooperator organizations and participating Federal agencies with the technology to electronically manage extramural invention portfolios in compliance with Federal reporting requirements.

Intangible property means, trademarks, copyrights, patents and patent applications.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the Cooperator during the same or a future period.

OMB means the Office of Management and Budget.

Outlays or expenditures means charges made to the project or program. Outlays and expenditures also include cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the Cooperator for goods and other property received, for services performed by employees, contractors, subrecipients, and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Peer Review is a process utilized by REE Agencies to:

(1) Determine if agency sponsored research projects have scientific merit and program relevance;

(2) Provide peer input and make improvements to project design and technical approaches;

(3) Provide insight on how to conduct the highest quality research in support of Agency missions and programs.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Principle Investigator (PI) means the individual, designated by the Cooperator, responsible for directing and monitoring the performance, the day-to-day activities, and the scientific and technical aspects of the Cooperator's portion of a REE funded project. The PI works jointly with the ADODR in the development of project objectives and all other technical and performance related aspects of the program or project. See additional responsibilities of PI in § 550.32.

Prior approval means written approval by an ADO evidencing prior consent.

Program income means gross income earned by the Cooperator that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally funded projects, the sale of commodities or items fabricated under an award, and license fees and royalties on patents and copyrights. Program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them, or interest earned on advances of Federal funds.

Project costs means all allowable costs, incurred by the Cooperator and the REE Agency toward the completion of the project.

Project period means the period established in the cooperative agreement during which Federal contributions begin and end.

Property means, unless otherwise stated, personal property, equipment, intangible property.

Publications mean all types of paper based media including electronic and audio media.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

REE Agency means the USDA Agency that enters into a cooperative agreement with the cooperator.

State Cooperative Institutions are defined in statute as institutions designated or receiving funds pursuant to:

(1) The First Morrill Act—The Land Grant Institutions.

(2) The Second Morrill Act—The 1890 Institutions.

(3) The Hatch Act of 1887—The State Agricultural Experiment Stations.

(4) The Smith-Lever Act—The State Extension Services.

(5) The McIntire-Stennis Act of 1962—The Cooperating Forestry Schools.

(6) Public Law 95–113, Section 1430—A college or university having an accredited college of veterinary medicine or a department of veterinary science or animal pathology or similar unit conducting animal health and disease research in a State Agricultural Experiment Station.

(7) Public Law 97–98, Section 1475b—Colleges, universities, and Federal laboratories having a demonstrated capacity in aquaculture research.

(8) Public Law 97–98, Section 1480—Colleges, universities, and Federal laboratories having a demonstrated capacity of rangeland research.

(9) Equity in Educational Land—Grant Status Act of 1994 (7 U.S.C. 301 note) 1994 Institutions.

Subaward means an award in the form of money or in-kind services or property in lieu of money, made under an award by a Cooperator to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the Cooperator for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the REE Agency.

Supplies means all personal property excluding equipment, intangible property, as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

Suspension means an action by a REE Agency that temporarily withdraws Federal sponsorship under an award,

pending corrective action by the Cooperator or pending a decision to terminate the award by the REE Agency. Suspension of an award is a separate action from suspension under Federal Agency regulations implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Unliquidated obligations are the amount of obligations incurred by the Cooperator for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the REE Agency that has not been obligated by the Cooperator and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount, which could have been awarded under the Cooperator's approved negotiated indirect cost rate.

U.S.C. means the United States Code.

USDA means the United States Department of Agriculture.

§ 550.3 Applicability.

This Part applies to all REE non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

§ 550.4 Eligibility.

REE agencies may enter into non-assistance cooperative agreements with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other party, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences. (7 U.S.C. 3318(b)(1)).

§ 550.5 Competition.

REE agencies may enter into non-assistance cooperative agreements, as authorized by this Part, without regard to any requirements for competition. (7 U.S.C. 3318(e)).

§ 550.6 Duration.

REE may enter into non-assistance cooperative agreements for a period not to exceed five years.

§ 550.7 Exceptions.

This Part does not apply to:

(a) USDA Federal Financial Assistance agreements subject to 7 CFR 3015, 3016, or 3019.

(b) Procurement contracts or other agreements subject to the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AgAR); on Agreements providing loans or insurance directly to an individual.

§ 550.8 Conflicting policies and deviations.

This Part supersedes and takes precedence over any individual REE regulations and directives dealing with the award and administration of non-assistance cooperative agreements entered into under the delegated authority of 7 U.S.C. 3318(b). This Part may only be superseded, in whole or in part, by either a specifically worded statutory provision or a waiver authorized by the USDA–REE–Administrative and Financial Management (AFM)-Extramural Agreements Division (EAD) or any successor organization. Responsibility for developing, interpreting, and updating this Part is assigned to the USDA–REE–AFM–EAD or any successor organization.

§ 550.9 Other applicable regulations.

Related issuances are in other Parts of the CFR and the U.S.C. as follows:

(a) 7 CFR Part 3017 ''Governmentwide Debarment and Suspension'';

(b) 7 CFR Part 3018 ''New Restrictions on Lobbying'';

(c) 7 CFR Part 3052 ''Audits of States, Local Governments, and Nonprofit Organizations'';

(d) 7 CFR 3015.175 (b) ''Copyrights'';

(e) 37 CFR 401.14 ''Standard Patent Rights Clause'';

(f) 15 U.S.C. 205a *et seq.*—''The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act'';

(g) 42 U.S.C. 6962 ''Resource Conservation and Recovery Act (RCRA)''.

§ 550.10 Special Award Conditions.

(a) REE Agencies may impose special conditions and/or additional requirements to a non-assistance agreement if a Cooperator:

(1) Has a history of poor performance,

(2) Is not financially stable,

(3) Has a management system that does not meet the standards prescribed in this Part,

(4) Has not conformed to the terms and conditions of a previous award, or

(5) Is not otherwise responsible.

(b) Special conditions and/or additional requirements may be added to an award provided that the Cooperator is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

Subpart B—Formation of Agreements

§ 550.11 Purpose.

Sections 550.12 through 550.18 prescribe instructions and other pre-award matters to be used in establishing a non-assistance cooperative agreement.

§ 550.12 Statutory authorization required (REE Agency).

REE Agencies must have programmatic statutory authority for the proposed project prior to entering into any non-assistance cooperative agreement.

§ 550.13 Mutuality of interest.

The REE Agency shall document both parties interest in the project. Mutual interest exists when both parties benefit in the same qualitative way from the objectives of the agreement. If one party to the agreement would independently have an interest in the project, which is shared by the other party, and both parties pool resources to obtain the end result of the project, mutual interest exists.

§ 550.14 Indirect cost/tuition remission.

(a) *Indirect Cost.* (1) State Cooperative Institutions: Payment of indirect costs to State Cooperative Institutions in connection with non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b) is prohibited. This prohibition does not apply to funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance or reimbursement. (7 U.S.C. 3319.)

(2) Non-Profit Organizations: Payment of indirect costs to non-profit institutions in connection with USDA cooperative agreement, under the authority of 7 U.S.C. 3318(b), is limited to 10 percent of the total direct cost of the project. (Annual Appropriations Bill for Agriculture and Related agencies, General Provisions.)

(3) All other cooperating organizations: With the exception of paragraphs (a)(1) and (2) of this section, payment of indirect costs is allowable in connection with REE non-assistance cooperative agreements. Reimbursement

of indirect costs is limited to the percentage(s) established in the Cooperator's negotiated indirect cost rate schedule.

(4) In any case, the REE Agency shall not reimburse indirect costs prior to receipt of the Cooperator's negotiated indirect cost rate schedule.

(b) *Tuition Remission.* (1) State Cooperative Institutions: Reimbursement of tuition expenses to State Cooperative Institutions in connection with REE non-assistance cooperative agreements is prohibited. (7 U.S.C. 3319)

(2) All other cooperating organizations: Except for paragraph (b)(1) of this section, tuition remission is an allowable expense as determined in accordance with the cost principles applicable to the Cooperator. REE agencies shall negotiate and approve such payments as related to the scope and objectives of the non-assistance agreement.

§ 550.15 Resource contribution.

Each party must contribute resources towards the successful completion of the project. Required resource contributions must be substantial enough to substantiate a true stake in the project as determined by the ADO.

(a) *REE Agency's Contribution.* The REE Agency's contribution must consist of the total in-house costs to the REE Agency and the total amount to be reimbursed by the REE Agency to the Cooperator for all allowable costs agreed to in advance as reflected in the cooperative agreement.

(b) *Cooperator's Contribution.* (1) The Cooperator's contribution must be no less than 20 percent of the total of the resource contributions under the cooperative agreement. Resource contributions of the Cooperator must consist of a sufficient amount of itemized direct costs to substantiate a true stake in the project as determined by the ADO. The Cooperator's contribution must be maintained at 20 percent of Federal funding throughout the life of the cooperative agreement.

(2) Cooperators share of contributions may consist of ''in-kind'' contributions and may also include unrecoverable indirect costs. Such costs may be accepted as part of the Cooperator's resource contribution when all of the following criteria are met:

(i) Costs are verifiable from the Cooperator's records.

(ii) Costs are not included as contributions for any other federally assisted project or program.

(iii) Costs are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(iv) Costs are allowable under the applicable cost principles.

(v) Costs are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(vi) Costs conform to other provisions of this Part, as applicable.

(3) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as resource contributions if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the Cooperator's organization. In those instances in which the required skills are not found in the Cooperator organization, rates shall be consistent with those paid for similar work in the labor market in which the Cooperator competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) When an employer other than the Cooperator furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(5) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(6) The value of donated property shall be determined in accordance with the usual accounting policies of the Cooperator, with the following qualifications.

(i) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the Cooperator as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the Cooperator.

(ii) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(iii) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(iv) The value of loaned equipment shall not exceed its fair rental value.

(v) The following requirements pertain to the Cooperator's supporting records for in-kind contributions from third parties.

(A) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the Cooperator for its own employees.

(B) The basis for determining the valuation for personal service, material, equipment, buildings, and land shall be documented.

§ 550.16 Project development.

REE provides partial funding to Cooperators to support research projects that contribute to REE program objectives and help carry out the REE mission. The Cooperator's PI and the REE Agency's ADODR shall jointly develop the following documentation:

(a) *Project Plan*—A plan that shall be jointly developed by the REE ADODR and the Cooperator that is compliant with an REE program requirement. The project plan will utilize the REE provided format for external peer review.

(b) *Statement of Work*—A detailed statement of work shall be jointly planned, developed and prepared by the Cooperator's PI and the awarding Agency's ADODR consisting of the following:

(1) Objective

(2) Approach

(3) Statement of Mutual Interest

(4) Performance Responsibilities

(5) Mutual Agreements

(c) *Budget*—A plan that shall be jointly developed by the REE ADODR and the Cooperator PI outlining the following resource contributions:

(1) Total amount to be reimbursed by the REE Agency to the Cooperator. (Direct and Indirect Costs as applicable)

(2) Total in-house costs to the REE Agency. (Direct and indirect costs)

(3) Total in-house costs to the Cooperator. (Direct and indirect costs)

§ 550.17 Peer review.

Upon request of the REE Agency, cooperators may be requested to provide documentation in support of peer review activities and cooperator personnel may be requested to participate in peer review forums to assist the REE Agency in their reviews.

§ 550.18 Assurances/certifications.

(a) Governmentwide Debarment and Suspension (Non procurement)—7 CFR 3017;

(b) Governmentwide requirements for Drug-Free Workplace—7 CFR 3021;

(c) Non-discrimination. The Cooperator assures compliance with the following requirement: No person in the United States shall, on the grounds of race, color, national origin, sex, age, religion, political beliefs, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity under a non-assistance cooperative agreement.

(d) Protection of Human Subjects Requirements: The Cooperator assures compliance with the following provisions regarding the rights and welfare of human subjects:

(1) The Cooperator is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this Agreement. The Cooperator may conduct research involving human subjects only as prescribed in the statement of work and as approved by the Cooperator's Cognizant Institutional Review Board. Prior to conducting such research, the Cooperator shall obtain and document a legally sufficient informed consent from each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waive, or to appear to waive, any of his or her legal rights, including any release of the Cooperator or its agents from liability for negligence.

(2) The Cooperator agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR part 46 (as amended).

(3) It will comply with REE policy, which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(4) Selection of subject or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

(e) Animal Welfare Act Requirements: The Cooperator assures compliance with the Animal Welfare Act, as amended, 7 U.S.C. 2131, et seq., and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. The Cooperator may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

(f) Recombinant DNA Research Requirements: The Cooperator assures that it will assume primary responsibility for implementing proper conduct on recombinant DNA research and it will comply with the National Institute of Health Guidelines for Recombinant DNA Research, as revised.

(1) If the Cooperator wishes to send or receive registered recombinant DNA material which is subject to quarantine laws, permits to transfer this material into the U.S. or across state lines may be obtained by contacting USDA/APHIS/PPQ, Scientific Services—Biotechnology Permits, 4700 River Road, Unit 133, Riverdale, Maryland 20737. In the event that the Cooperator has not established the necessary biosafety committee, a request for guidance or assistance may be made to the USDA Recombinant DNA Research Officer.

(2) [Reserved]

(g) Agriculture Bioterrorism Protection Act Requirements: The Cooperator assures compliance with the Agriculture Bioterrorism Protection Act of 2002, as implemented at 7 CFR part 331 and 9 CFR part 121, by agreeing that it will not possess, use, or transfer any select agent or toxin without a certificate of registration issued by the Agency.

Subpart C—Management of Agreements

Financial Management

§ 550.19 Purpose.

Sections 550.20 through 550.25 of this subpart prescribe standards for financial management systems and program management requirements.

§ 550.20 Standards for financial management systems.

(a) REE agencies shall require Cooperators to relate financial data to performance data.

(b) Cooperators' financial management systems shall provide for the following:

(1) Accurate, current, and complete disclosure of the financial results of each REE sponsored project or program in accordance with the reporting requirements set forth in § 550.53 of this part. REE requires financial reporting on an accrual basis; however, the Cooperator shall not be required to establish an accrual accounting system. These Cooperators shall develop such accrual data through best estimate for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify the source and application of funds for federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Cooperators shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the Cooperator from the U.S. Treasury and the issuance or redemption of a check, warrant or payment by other means for program purposes by the Cooperator. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Rules and procedures for efficient Federal State funds transfer.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 550.21 Funding availability.

The funding period will begin on the date of final signature, unless otherwise stated on the agreement, and continue for the project period specified on the cover page of the cooperative agreement.

§ 550.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of a check, warrant, or payment by other means by the Cooperators. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Reimbursement is the preferred method of payment. All payments to the Cooperator shall be made via EFT.

(1) When the reimbursement method is used, the REE Agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Cooperators shall be authorized to submit requests for payment not more than quarterly and not less frequently than annually.

(3) Content of Invoice.

At a minimum, the Cooperator's invoice shall state the following:

(i) The name and address of the Cooperator;

(ii) The name and address of the PI;

(iii) The name and address of the financial officer to whom payments shall be sent;

(iv) A reference to the cooperative agreement number;

(v) The invoice date;

(vi) The time period covered by the invoice; and

(vii) Total dollar amount itemized by budget categories (labor, direct costs, and indirect costs, etc.).

(4) To facilitate the EFT process, the Cooperator shall provide the following information:

(i) The name, addresses, and telephone number of the financial institution receiving payment;

(ii) The routing transit number of the financial institution receiving payment;

(iii) The account to which funds are to be deposited; and

(iv) The type of depositor account (checking or savings).

(c) If the REE Agency has determined that reimbursement is not feasible because the Cooperator lacks sufficient working capital, the REE Agency may provide cash on an advance basis provided the Cooperator maintains or demonstrates the willingness to maintain: Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Cooperator, and financial management systems that meet the standards for fund control and accountability as established in § 550.20. Under this procedure, the REE Agency shall advance cash to the Cooperator to cover its estimated disbursement needs for an initial period. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the Cooperator organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to the requirements of 31 CFR part 205.

(3) Requests for advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement.'' This form is not to be used when advance payments are made to the Cooperator automatically through the use of a predetermined payment schedule or if precluded by special REE Agency instructions for electronic funds transfer.

(4) Cooperators shall maintain advances of Federal funds in interest bearing accounts, unless § 550.22(c)(4)(i), (ii), or (iii) applies.

(i) The Cooperator receives less than $120,000 in Federal awards per year.

(ii) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(5) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. The Cooperator for administrative expense may retain interest amounts up to $250 per year. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the REE Agency, it waives its right to recover the interest under CMIA. Thereafter, the REE Agency shall reimburse the Cooperator for its actual cash disbursements.

(6) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the REE Agency to the Cooperator. The working capital advance method of payment shall not be used for Cooperators unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(d) To the extent available, Cooperators shall disburse funds available from repayments to and interest earned on program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(e) Unless otherwise required by statute, REE Agencies shall not withhold payments for proper charges made by Cooperators at any time during the project period unless the conditions of paragraphs (e)(1) or (2) of this section apply.

(1) A Cooperator has failed to comply with the project objectives, the terms and conditions of the award, or REE reporting requirements.

(2) The Cooperator owes a debt to the United States which is subject to offset pursuant to 7 CFR part 3 and Federal Clause Collection Standard; 31 CFR parts 901 through 904.

(f) Standards governing the use of banks and other institutions as depositories of funds advanced or reimbursed under awards are as follows:

(1) Except for situations described in § 550.22(f)(2), REE Agencies shall not require separate depository accounts for funds provided to a Cooperator or establish any eligibility requirements for depositories for funds provided to a Cooperator. However, Cooperators must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

§ 550.23 Program income.

(a) REE Agencies shall apply the standards set forth in this section in requiring Cooperator organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in § 550.23(f), program income earned during the project period shall be retained by the Cooperator and shall be added to funds committed to the project by the REE Agency and Cooperator and used to further eligible project or program objectives.

(c) Cooperators shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(d) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(e) Proceeds from the sale of property shall be handled in accordance with the

requirements of the Property Standards (See §§ 550.36 through 550.42).

(f) Cooperators shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. Chapter 25) apply to inventions made under an experimental, developmental, or research award.

§ 550.24 Non-Federal audits.

(a) Cooperators and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the REE agencies.

(d) Commercial organizations shall be subject to the audit requirements of the REE Agency or the prime recipient as incorporated into the award document.

§ 550.25 Allowable costs.

For each kind of Cooperator, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' codified at 2 CFR part 225. The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations'' codified at 2 CFR part 230. The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions'' codified at 2 CFR 220. The allowability of costs incurred by hospitals is determined in accordance with the provisions of Subpart E of 45 CFR part 74. The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Appendix C to Circular A–122 (2 CFR part 230) is determined in accordance with the contract cost principles and procedures of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

Program Management

§ 550.26 Monitoring program performance.

(a) Cooperators are responsible for managing the day-to-day operations of REE nonassistance awards using their established controls and policies, as long as they are consistent with REE requirements. However, in order to fulfill their role in regard to the stewardship of Federal funds, REE Agencies monitor their agreements to identify potential problems and areas where technical assistance might be necessary. This active monitoring is accomplished through review of reports and correspondence from the cooperator, audit reports, site visits, and other information available to the REE Agency. It is the responsibility of the Cooperator to ensure that the project is being performed in compliance with the terms and conditions of the award.

(b) Monitoring of a project or activity will continue for as long as the REE Agency retains a financial interest in the project or activity. REE agencies reserve the right to monitor a project after it has been administratively closed out and no longer providing active support in order to resolve issues of accountability and other administrative requirements. Additional requirements regarding reporting and program performance can be found in §§ 550.51 through 550.55 of this part.

(c) The REE Agency reserves the right to perform site visits at Cooperator locations. Access to project or program records shall be provided in accordance with the provisions of § 550.55.

§ 550.27 Prior approvals.

(a) The budget is the financial expression of the project or program as approved during the award process. REE agencies require that all Federal costs be itemized on the approved budget. The budget shall be related to performance for program evaluation purposes.

(b) Cooperators are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions.

(c) Cooperators shall request prior approvals from REE Agencies for one or more of the following program or budget related reasons.

(1) Incur pre-award costs up to 90 days prior to award date. All pre-award costs are incurred at the Cooperator's risk (i.e., the REE Agency is under no obligation to reimburse such costs if for any reason the Cooperator does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) Extensions of time, within statutory limitations, to complete project objectives. This extension may not be requested merely for the purpose of using unobligated balances. The Cooperator shall request the extension in writing with supporting reasons.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(6) The inclusion of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions,'' (2 CFR part 220), OMB Circular A–122, ''Cost Principles for Non-Profit Organizations'' (2 CFR part 230) or 45 CFR part 74 Appendix E, or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) Unless described in the agreement and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) When requesting approval for budget revisions, Cooperators shall use the budget form used in the cooperative agreement.

(e) Within 30 calendar days from the date of receipt of the request for budget revisions, the ADO shall review the request and notify the Cooperator whether the budget revisions have been approved.

§ 550.28 Publications and acknowledgment of support.

(a) *Publications.* REE Agencies and the Federal Government shall enjoy a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any materials developed in conjunction with a nonassistance cooperative agreement or contract under such an agreement.

(b)(1) Cooperators shall acknowledge ARS, Economics Research Service

(ERS), National Agricultural Statistics Service (NASS), and the Cooperative State Research, Education, and Extension Service (CSREES) support, whether cash or in-kind, in any publications written or published with Federal support and, if feasible, on any publication reporting the results of, or describing, a Federally supported activity as follows:

''This material is based upon work supported by the U.S. Department of Agriculture, ____ (insert Agency name) ____ under Agreement No. (Cooperator should enter the applicable agreement number here).''

(2) All such material must also contain the following disclaimer unless the publication is formally cleared by the awarding agency:

''Any opinions, findings, conclusion, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture.''

(3) Any public or technical information related to work carried out under a non assistance cooperative agreement shall be submitted by the developing party to the other for advice and comment. Information released to the public shall describe the contributions of both parties to the work effort. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

(c) *Media.* Cooperators shall acknowledge awarding Agency support, as indicated in § 550.28(b) above, in any form of media (print, DVD, audio production, etc.) produced with Federal support that has a direct production cost to the Cooperator of over $5,000. Unless the terms of the Federal award provide otherwise, this requirement does not apply to:

(1) Media produced under mandatory or formula grants or under sub awards.

(2) Media produced as research instruments or for documenting experimentation or findings and intended for presentation or distribution to a USDA/REE audience.

§ 550.29 Press releases.

Press releases or other forms of public notification will be submitted to the REE agency for review prior to release to the public. The REE Agency will be given the opportunity to review, in advance, all written press releases and any other written information to be released to the public by the Cooperator, and require changes as deemed necessary, if the material mentions by name the REE Agency or the USDA, or any USDA employee or research unit or location.

§ 550.30 Advertising.

The Cooperator will not refer in any manner to the USDA or agencies thereof in connection with the use of the results of the project without prior specific written authorization by the awarding Agency. Information obtained as a result of the project will be made available to the public in printed or other forms by the awarding Agency at its discretion. The Cooperator will be given due credit for its cooperation in the project. Prior approval is required.

§ 550.31 Questionnaires and survey plans.

The Cooperator is required to submit to the REE Agency copies of questionnaires and other forms for clearance in accordance with the Paperwork Reduction Act of 1980 and 5 CFR part 1320.

§ 550.32 Project supervision and responsibilities.

(a) The Cooperator is responsible and accountable for the performance and conduct of all Cooperator employees assigned to the project. The REE Agency does not have authority to supervise Cooperator employees or engage in the employer employee relationship.

(b) The PI shall:

(1) Work jointly with the ADODR in the development of the project statement of work;

(2) Work jointly with the ADODR in the development of the project budget;

(3) Report, and obtain approval for, any change in the project budget;

(4) Report, and obtain approval for, any change in the scope or objectives of the project;

(5) Assure that technical project performance and financial status reports are submitted on a timely basis in accordance with the terms and conditions of the award;

(6) Advise the ADODR of any issues that may affect the timely completion of the project;

(7) Assure that the Cooperator meets its commitments under the terms and conditions of the non-assistance agreement;

(8) Assure that appropriate acknowledgements of support are included in all publications, in accordance with § 550.28 of this Part.

(9) Assure that inventions are appropriately reported in accordance with § 550.54 of this Part; and

(10) Upon request, provide the REE Agency with a project plan for use for external peer review.

§ 550.33 Administrative supervision.

REE employees are prohibited from engaging in matters related to cooperator employer/employee relations such as personnel, performance and time management issues. The cooperator is solely responsible for the administrative supervision of its employees.

§ 550.34 Research misconduct.

(a) The Cooperator bears the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation and adjudication of research misconduct alleged to have occurred in association with their own institution.

(b) The Cooperator shall:

(1) maintain procedures for responding to allegations or instances of research misconduct that has the following components:

(i) Objectivity;

(ii) Due process;

(iii) Whistle blower protection;

(iv) Confidentiality;

(v) Timely resolution;

(2) Promptly conduct an inquiry into any allegation of research misconduct;

(3) Conduct an investigation if an inquiry determines that the allegation or apparent instance of research misconduct has substance;

(4) Provide appropriate separation of responsibilities between those responsible for inquiry and investigation, and those responsible for adjudication;

(5) Advise REE Agency of outcome at end of inquiries and investigations into allegations or instances of research misconduct; and

(6) Upon request, provide the REE Agency, upon request, hard copy (or website address) of their policies and procedures related to research misconduct.

(c) Research misconduct or allegations of research misconduct shall be reported to the USDA Research Integrity Officer (RIO) and/or to the USDA, Office of Inspector General (OIG) Hotline.

(1) The USDA RIO can be reached at: USDA Research Integrity Officer, 214–W Whitten Building, Washington, DC 20250, Telephone: 202–720–5923, Email: *researchintegrity@usda.gov.*

(2) The USDA OIG Hotline can be reached on: 1–800–424–9121.

§ 550.35 Rules of the workplace.

Cooperator employees, while engaged in work at the REE Agency's facilities, will abide by the Agency's standard operating procedures regarding the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, hours of work, conduct, and other incidental matters stated in the rules and regulations of the Agency.

Equipment/Property Standards

§ 550.36 Purpose of equipment/property standards.

Sections 550.37 through 550.42 of this part set forth uniform standards governing management and disposition of property furnished by the Federal Government or acquired by the Cooperator with funds provided by the Federal Government. The Cooperator may use its own property management standards and procedures provided it observes other applicable provisions of this Part.

§ 550.37 Title to equipment.

(a) As authorized by 7 U.S.C. 3318(d), title to expendable and nonexpendable equipment, supplies, and other tangible personal property purchased with Federal funding in connection with a non assistance cooperative agreement shall vest in the Cooperator from date of acquisition unless otherwise stated in the cooperative agreement.

(b) Notwithstanding any other provision of this rule the REE Agency may, at its discretion, retain title to equipment described in paragraph (a) of this section that is or may be purchased with Federal funds when the REE agency determines that it is in the best interest of the Federal Government.

§ 550.38 Equipment.

(a) The Cooperator shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(b) The Cooperator shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the REE Agency. When no longer needed for the original project or program, the Cooperator shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the REE Agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(c) During the time that equipment is used on the project or program for which it was acquired, the Cooperator shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired as may be determined by the REE Agency. First preference for such other use shall be given to other projects or programs sponsored by the REE Agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the REE Agency. User charges shall be treated as program income.

(d) When acquiring replacement equipment, unless otherwise directed by the REE Agency, the Cooperator shall use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the REE Agency.

(e) The Cooperator's property management standards for equipment acquired with Federal funds and federally owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment;

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number;

(iii) Source of the equipment, including the award number;

(iv) Whether title vests in the Cooperator or the Federal Government;

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost;

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government);

(vii) Location and condition of the equipment and the date the information was reported;

(viii) Unit acquisition cost; and

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Cooperator compensates the REE Agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years and a copy provided to the ADO responsible for the agreement. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Cooperator shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented. If the Federal Government owns the equipment, the Cooperator shall promptly notify the REE Agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the Cooperator is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(f) When the Cooperator no longer needs the equipment, the equipment shall be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the Cooperator may retain the equipment for other uses provided that compensation is made to the original REE Agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the Cooperator has no need for the equipment, the Cooperator shall request disposition instructions from the REE Agency. The REE Agency shall determine whether the equipment can be used to meet the Agency's requirements. If no requirement exists within that Agency, the availability of the equipment shall be reported to the General Services Administration (GSA) by the REE Agency to determine whether a requirement for the equipment exists in other Federal agencies. The REE Agency shall issue instructions to the Cooperator no later than 120 calendar days after the Cooperator's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Cooperator's request, the Cooperator shall sell the equipment and reimburse the REE Agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Cooperator shall be permitted to deduct and retain from the Federal share $500 or ten percent of

the proceeds, whichever is less, for the Cooperator's selling and handling expenses.

(2) If the Cooperator is instructed to ship the equipment elsewhere, the Cooperator shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the Cooperator's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Cooperator is instructed to otherwise dispose of the equipment, the Cooperator shall be reimbursed by the REE Agency for such costs incurred in its disposition.

(4) The REE Agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the Cooperator in writing.

(ii) The REE Agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with federal funds and federally owned equipment. If the REE Agency fails to issue disposition instructions within the 120 calendar days, the Cooperator shall apply the standards of this section, as appropriate.

(iii) When the REE Agency exercises its right to take title, the equipment shall be subject to the provisions for federally owned equipment.

§ 550.39 Equipment replacement insurance.

If required by the terms and conditions of the award, the Cooperator shall provide adequate insurance coverage for replacement of equipment acquired with Federal funds in the event of loss or damage to such equipment.

§ 550.40 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the Cooperator upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the Cooperator shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The Cooperator shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 550.41 Federally-owned property.

(a) Title to federally-owned property remains vested in the Federal Government. Cooperators shall submit annually an inventory listing of federally-owned property in their custody to the REE Agency. Upon completion of the award or when the property is no longer needed, the Cooperator shall report the property to the REE Agency for further Federal Agency utilization.

(b) If the REE Agency has no further need for the property, it shall be declared excess and reported to the GSA, unless the REE Agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, ''Education technology: ensuring Opportunity for all children in the next century.'' Appropriate instructions shall be issued to the Cooperator by the REE Agency.

§ 550.42 Intangible property.

(a) The Cooperator may copyright any work that is subject to copyright and was developed, by the Cooperator, or jointly by the Federal Government and the Cooperator, or for which ownership was purchased, under a cooperative agreement. REE Agencies reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so for Federal purposes.

(b) Cooperators are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) The REE Agency has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under a cooperative agreement; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a cooperative agreement that were used by the Federal Government in developing an Agency action that has the force and effect of law, the REE Agency shall request, and the Cooperator shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the REE Agency obtains the research data solely in response to a FOIA request, the Agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Agency, the Cooperator, and applicable subrecipients. This fee is in addition to any fees the Agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal;

(B) A Federal Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law; or

(C) Used by the Federal Government in developing an Agency action that has the force and effect of law is defined as when an Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law.

(e) All rights, title, and interest in any Subject Invention made solely by employee(s) of the REE Agency shall be owned by the REE Agency. All rights, title, and interest in any Subject Invention made solely by at least one (1) employee of the REE Agency and at least one (1) employee of the Cooperator shall be jointly owned by the Agency and the Cooperator, subject to the provisions of 37 CFR part 401.

(f) REE Agencies shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

Procurement Standards

§ 550.43 Purpose of procurement standards.

Sections 44 through 50 set forth standards for use by Cooperators in establishing procedures for the procurement of supplies and other expendable property, equipment and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon Cooperators, unless specifically required by Federal statute or executive order or approved by OMB.

§ 550.44 Cooperator responsibilities.

The standards contained in this section do not relieve the Cooperator of the contractual responsibilities arising under its contract(s). The Cooperator is the responsible authority, without recourse to the REE Agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a nonassistance agreement. This includes disputes, claims, award protests, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority, as may have proper jurisdiction.

§ 550.45 Standards of conduct.

The Cooperator shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Cooperator shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Cooperators may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Cooperator.

§ 550.46 Competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Cooperator shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Cooperator, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offer shall fulfill in order for the bid or offer to be evaluated by the Cooperator. Any and all bids or offers may be rejected when it is in the Cooperator's interest to do so.

(b) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, ''Debarment and Suspension.''

(c) Recipients shall, on request, make available for the REE Agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

§ 550.47 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 550.48 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 550.49 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely followup of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 550.50 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the cooperator, including the manner by which termination shall

be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the REE Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A, 2 CFR part 215, as applicable.

Reports and Records

§ 550.51 Purpose of reports and records.

Sections 550.52 through 550.55 set forth the procedures for monitoring and reporting on the Cooperator's financial and program performance and the necessary reporting format. They also set forth record retention requirements, and property and equipment inventory reporting requirements.

§ 550.52 Reporting program performance.

(a) The REE Agency shall prescribe the frequency with which performance reports shall be submitted. Performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The REE Agency may require annual reports before the anniversary dates of multiple year agreements in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the period of agreement.

(b) When required, performance reports shall contain, for each award, detailed information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period and the findings of the investigator. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Cooperators shall not be required to submit more than the original and two copies of performance reports.

(d) Cooperators shall immediately notify the REE Agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

§ 550.53 Financial reporting.

Financial Status Report.

(a) Each REE Agency shall require Cooperators to report the status of funds as approved in the budget for the cooperative agreement. A financial status report shall consist of the following information:

(1) The name and address of the Cooperator.

(2) The name and address of the PI.

(3) The name, address, and signature of the financial officer submitting the report.

(4) A reference to the cooperative agreement.

(5) Period covered by the report.

(6) An itemization of actual dollar amounts expended on the project during the reporting period (in line with the approved budget) and cumulative totals expended for each budget category from the starting date of the cooperative agreement.

(b) The REE Agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(c) The REE Agency shall require Cooperators to submit the financial status report (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the REE Agency upon request of the Cooperator.

§ 550.54 Invention disclosure and utilization reporting.

(a) The Cooperator shall report Invention Disclosures and Utilization information electronically via i-Edison Web Interface at: *www.iedison.gov.*

(b) If access to InterAgency Edison is unavailable, the invention disclosure should be sent directly to: Division of Extramural Intentions and Technology Resources, 6705 Rockledge Drive, (RKL 1), Suite 310, MSC 7980, Bethesda, Maryland 20892–7750.

§ 550.55 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to Cooperators. REE agencies shall not impose any other record retention or access requirements upon Cooperators, excepting as set out in § 550.42(d).

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of 3 years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the REE Agency. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition;

(3) When records are transferred to or maintained by the REE Agency, the 3-year retention requirement is not applicable to the Cooperator;

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in paragraph (f) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the REE Agency.

(d) The REE Agency shall request transfer of certain records to its custody from Cooperators when it determines that the records possess long-term retention value. However, in order to avoid duplicate record keeping, a REE Agency may make arrangements for Cooperators to retain any records that are continuously needed for joint use.

(e) The REE Agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access

to any books, documents, papers, or other records of Cooperators that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Cooperator's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) No Cooperator shall disclose its records that are pertinent to an award until the Cooperator provides notice of the intended disclosure with copies of the relevant records to the REE Agency.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the Cooperator submits to the REE Agency or the subrecipient submits to the Cooperator the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Cooperator is not required to submit to the REE Agency or the subrecipient is not required to submit to the Cooperator the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Suspension, Termination, and Enforcement

§ 550.56 Purpose of suspension, termination, and enforcement.

Sections § 550.57 and § 550.58 of this part set forth uniform suspension, termination, and enforcement procedures.

§ 550.57 Suspension and termination.

Awards may be suspended or terminated in whole or in part if paragraphs (a), (b), or (c) of this section apply.

(a) The REE Agency may terminate the award, if a Cooperator materially fails to comply with the provisions of this rule or the terms and conditions of an award.

(b) The REE Agency with the consent of the Cooperator, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(c) If costs are allowed under an award, the responsibilities of the Cooperator referred to in § 550.32, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the Cooperator after termination, as appropriate.

§ 550.58 Enforcement.

(a) Remedies for noncompliance. If a Cooperator materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the REE Agency may, in addition to imposing any of the special conditions outlined in § 550.10, take one or more of the following actions.

(1) Temporarily withhold cash payments pending correction of the deficiency by the Cooperator or more severe enforcement action by the REE Agency.

(2) Disallow all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Effects of suspension and termination. Costs of a Cooperator resulting from obligations incurred by the Cooperator during a suspension or after termination of an award are not allowable unless the REE Agency expressly authorizes them in the notice of suspension or termination or thereafter. Other Cooperator costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (b)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the Cooperator before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(3) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a Cooperator from being subject to debarment and suspension under Executive Orders 12549 and 12689 and USDA implementing regulations (7 CFR part 3017).

Subpart D—Close Out

§ 550.59 Purpose.

Sections 550.60 through 550.62 of this part contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 550.60 Closeout procedures.

(a) Cooperators shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The REE Agency may approve extensions to the reporting period when requested by the Cooperator.

(b) Unless the REE Agency authorizes an extension, a Cooperator shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in Agency implementing instructions.

(c) The REE Agency shall make prompt payments to a Cooperator for allowable reimbursable costs under the award being closed out.

(d) The Cooperator shall promptly refund any balance of unobligated cash advanced or paid by the REE Agency that it is not authorized to retain for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the REE Agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The Cooperator shall account for any personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 550.36 through 550.42.

(g) In the event a final audit has not been performed prior to the closeout of an award, the REE Agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 550.61 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) The right of the REE Agency to disallow costs and recover funds on the basis of a later audit or other review.

(b) The obligation of the Cooperator to return any funds due as a result of later refunds, corrections, or other transactions.

(c) Audit requirements in § 550.24.

(d) Property management requirements in §§ 550.36 through 550.42.

(e) Records retention as required in § 550.56.

§ 550.62 Collection of amounts due.

(a) Any funds paid to a Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the REE Agency may in accordance with 7 CFR part 3, reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements, or

(2) Withholding advance payments otherwise due to the Cooperator, or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the REE Agency shall charge interest on an overdue debt in accordance with 31 CFR part 900, ''Federal Claims Collection Standards.''

Gale A. Buchanan,

Chief Scientist, USDA, Under Secretary, Research, Education, and Economics.

[FR Doc. E8–21941 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 1951 and 4274

RIN: 0570–AA70

Intermediary Relending Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) amends its regulations for the Intermediary Relending Program (IRP). This action is needed to address several contradictions between the servicing and processing regulations. The intended effect of this action is to incorporate consistent language in both regulations as it relates to loan limits for ultimate recipients, eligible vs. ineligible uses of funds, and include a requirement on the extent to which ultimate recipients are assisted by the loans made. The changes will result in eliminating inconsistencies within the regulations and provide clarity and guidance that will allow the program to operate more efficiently and effectively.

DATES: This direct final rule is effective November 3, 2008, unless USDA Rural Development receives written adverse comments or written notice of intent to submit adverse comments on or before October 20, 2008. If USDA Rural Development receives such comments or notice, USDA Rural Development will publish a timely document in the **Federal Register** withdrawing the direct final rule.

ADDRESSES: You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Lori A. Washington, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone (202) 720–9815, E-mail *lori.washington@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.767, Intermediary Relending Program.

Intergovernmental Review

The IRP is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. USDA Rural Development has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' and in 7 CFR part 3015, subpart V.

Civil Justice Reform

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (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 this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, ''Environmental Program.'' USDA Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA Rural Development must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, USDA Rural Development has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). USDA Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants. Therefore, a regulatory impact analysis was not performed.

Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Paperwork Reduction Act

This rule does not revise or impose any new information collection or recordkeeping requirements.

E-Government Act Compliance

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

Background

A recent Management Control Review of the program identified contradictions between the processing (7 CFR part 4274, subpart D) and servicing (7 CFR part 1951, subpart R) regulations. USDA Rural Development is correcting inconsistencies in the following areas: (1) Eligible and ineligible loan purposes; (2) ineligible borrowers; and (3) the definition of ''rural area.'' The following clarifications are being made (1) setting the level of ultimate recipient loan assistance; and (2) establishing when debt refinancing should be considered. We are also deleting references to churches which precluded charitable and faith-based institutions from participating in the program in order to align it with current Departmental policies. We are also requiring an annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by an intermediary.

List of Subjects

7 CFR Part 1951

Loan programs—Agriculture, rural areas.

7 CFR Part 4274

Community development, Economic development, Loan programs—Business, Rural areas.

■ For reasons set forth in this preamble, chapters XVIII and XLII, title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1951—SERVICING AND COLLECTIONS

■ 1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 301 U.S.C. 3716; 42 U.S.C. 1480.

Subpart R—Rural Development Loan Servicing

■ 2. Section 1951.853 is amended by adding paragraph (b)(2)(xi) to read as follows:

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

* * * * *

(b) * * *

(2) * * *

(xi) Debt refinancing if the following conditions are met.

(A) Intermediary is responsible for determining whether debt restructuring is in the best interest of the revolving loan fund.

(B) Refinancing debts will be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(C) On any request for refinancing of a secured loan, the intermediary must obtain the previously held collateral as security and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of an unsecured loan is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

■ 3. Section 1951.854 is amended by removing paragraphs (b)(7) and (b)(8) and revising paragraph (a) to read as follows:

§ 1951.854 Ineligible assistance purposes.

(a) *Intermediaries.* Intermediary loans may *not* be used by the intermediary for any of the following purposes:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) For assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable institutions, that would not have revenue from sales, fees, or stable revenue to support the operation and repay the loan, and fraternal organizations.

(5) For assistance to Federal government employees, active duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

(6) For relending in a non-rural area.

(7) For a loan to an ultimate recipient which has an application pending with, or a loan outstanding from, another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(8) For any line of credit.

(9) For lending and investment institutions and insurance companies.

(10) For golf courses, race tracks, or gambling facilities.

(11) To finance more than 75 percent or more than $250,000 of an ultimate recipient's total project cost, as described in § 4274.331(b). The total amount of RDLF funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed $150,000. This limit does not apply to revolved funds. Other loans, grants, or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(12) For any investments in securities or certificates of deposit of over 30-day

duration without the concurrence of Rural Development. If the IRP funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to Rural Development unless Rural Development provides an exception to the intermediary. Any exception would be based on evidence satisfactory to Rural Development that every effort is being made by the intermediary to utilize the IRP funding in conformance with program objectives.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4274—DIRECT AND INSURED LOANMAKING

■ 4. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

■ 5. Section 4274.314 is amended by revising paragraph (b)(10)(i) and by adding paragraph (b)(15) to read as follows:

§ 4274.314 Loan purposes.

* * * * *

(b) * * *

(10) * * *

(i) The intermediary is responsible for making prudent lending decisions based on sound underwriting principles when considering the restructuring of an ultimate recipient's debt; and

* * * * *

(15) Aquaculture-based rural small businesses.

■ 6. Section 4274.319 is amended by revising paragraphs (c) and (d) and by adding paragraphs (m) and (n) to read as follows:

§ 4274.319 Ineligible loan purposes.

* * * * *

(c) Charitable institutions, that would not have revenue from sales, fees, or stable revenue to support the operation and repay the loan, and fraternal organizations.

(d) Assistance to Federal government employees, active duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

* * * * *

(m) For any line of credit.

(n) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

■ 7. Section 4274.338 is amended by adding paragraph (b)(4)(ii)(D) to read as follows:

§ 4274.338 Loan agreements between the Agency and the intermediary.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(D) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

Dated: September 12, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–22003 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–XY–P

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1330]

Transactions Between Member Banks and Their Affiliates: Exemption for Certain Securities Financing Transactions Between a Member Bank and an Affiliate

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for public comment.

SUMMARY: In light of the continuing unusual and exigent circumstances in the financial markets, the Board has adopted, on an interim final basis, a regulatory exemption for member banks from certain provisions of section 23A of the Federal Reserve Act and the Board's Regulation W. The exemption increases the capacity of member banks, subject to certain conditions designed to help ensure the safety and soundness of the banks, to enter into securities financing transactions with affiliates.

DATES: The interim final rule became effective on September 14, 2008. Comments must be received on or before October 31, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1330, by any of the following methods:

Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Fax: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263, Legal Division, or Norah M. Barger, Deputy Director, (202) 452–2402, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

SUPPLEMENTARY INFORMATION: In light of the ongoing dislocations in the financial markets, and the potential impact of such dislocations on the functioning of the U.S. tri-party repurchase agreement market, the Board has adopted on an interim basis the following exemption from section 23A of the Federal Reserve Act (12 U.S.C. 371c) and the Board's Regulation W (12 CFR part 223). The exemption will facilitate the ability of an affiliate of a member bank (such as an SEC-registered broker-dealer) to obtain financing, if needed, for securities or other assets that the affiliate ordinarily would have financed through the U.S. tri-party repurchase agreement market. The exemption is subject to several conditions designed to protect the safety and soundness of the member bank.

First, the member bank may use the exemption to finance only those asset types that the affiliate currently finances in the U.S. tri-party repurchase agreement market.

Second, the transactions must be marked to market daily and subject to daily margin maintenance requirements,

and the member bank must be at least as over-collateralized in its securities financing transactions with the affiliate as the affiliate's clearing bank was in its U.S. tri-party repurchase agreement transactions with the affiliate on September 12, 2008. The Board expects the member bank and its affiliate to use standard industry documentation for the exempt securities financing transactions (which would, among other things, qualify the transactions as securities contracts or repurchase agreements for purposes of U.S. bankruptcy law).

Third, to ensure that member banks use the exemption in a manner consistent with its purpose—that is, to help provide liquidity to the U.S. tri-party repurchase agreement market—the aggregate risk profile of the exempt securities financing transactions must be no greater than the aggregate risk profile of the affiliate's U.S. tri-party repurchase agreement transactions on September 12, 2008. The exemption, therefore, permits an affiliate to obtain financing from its affiliated member bank for securities positions that the affiliate did not own or finance in the U.S. tri-party repurchase agreement market on September 12, 2008, but only if the new positions in the aggregate do not increase the overall risk profile of the affiliate's portfolio.

Fourth, the member bank's top-tier holding company must guarantee the obligations of the affiliate under the securities financing transactions (or must provide other security to the bank that is acceptable to the Board). Any member bank that intends to use a form of credit enhancement other than a parent company guarantee must consult in advance with Board staff. An example of the type of other security arrangement that may be acceptable to the Board would be a pledge by the affiliate or parent holding company to the member bank of a sufficient amount of additional liquid, high-quality collateral.

Fifth, a member bank may use the exemption only if the bank has not been specifically informed by the Board, after consultation with the bank's appropriate Federal banking agency, that the bank may not use this exemption. If the Board believes, after such consultation, that the exempt securities financing transactions pose an unacceptable level of risk to the bank, the Board may withdraw the exemption for the bank or may impose supplemental conditions on the bank's use of the exemption.

Consistent with its purpose to ameliorate potential temporary dislocations in the U.S. tri-party repurchase agreement market, the exemption will expire on January 30, 2009, unless extended by the Board.

The Board notes that any securities financing transactions between the member bank and an affiliate are subject to the market terms requirement of section 23B of the Federal Reserve Act (12 U.S.C. 371c–1). Section 23B requires that financial transactions between a bank and its affiliate be on terms and under circumstances (including credit standards) that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates. Among other things, section 23B would require the member bank to apply collateral haircuts to its affiliated securities financing transaction counterparty that are at least as strict as the bank would apply to comparable unaffiliated securities financing transaction counterparties.

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553(b) and (d)), the Board finds that there is good cause for making the exemption effective immediately on September 14, 2008, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The Board has adopted the exemption in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The exemption will provide immediate relief to participants in the U.S. tri-party repurchase agreement market affected by the current turmoil. The Board is soliciting comment on all aspects of the exemption and will make such changes that it considers to be appropriate or necessary after review of any comments received.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small insured depository institutions by granting an exemption from the Federal transactions with affiliates regime for insured depository institutions that engage in securities financing transactions with affiliates.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the interim final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use ''plain language'' in all proposed and final rules. In light of this requirement, the Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the rule easier to understand.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

■ For the reasons set forth in the preamble, Chapter II of Title 12 of the Code of Federal Regulations is amended as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c and 371c–1.

■ 2. In § 223.42, add paragraph (n) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(n) *Securities financing transactions.* (1) From September 15, 2008, until January 30, 2009 (unless further extended by the Board), securities financing transactions with an affiliate, if:

(i) The security or other asset financed by the member bank in the transaction is of a type that the affiliate financed in the U.S. tri-party repurchase agreement market at any time during the week of September 8–12, 2008;

(ii) The transaction is marked to market daily and subject to daily margin-maintenance requirements, and the member bank is at least as over-collateralized in the transaction as the affiliate's clearing bank was over-collateralized in comparable transactions with the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iii) The aggregate risk profile of the securities financing transactions under this exemption is no greater than the aggregate risk profile of the securities financing transactions of the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iv) The member bank's top-tier holding company guarantees the obligations of the affiliate under the securities financing transactions (or provides other security to the bank that is acceptable to the Board); and

(v) The member bank has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal banking agency, that the member bank may not use this exemption.

(2) For purposes of this exemption:

(i) *Securities financing transaction means:*

(A) A purchase by a member bank from an affiliate of a security or other asset, subject to an agreement by the affiliate to repurchase the asset from the member bank;

(B) A borrowing of a security by a member bank from an affiliate on a collateralized basis; or

(C) A secured extension of credit by a member bank to an affiliate.

(ii) *U.S. tri-party repurchase agreement market* means the U.S. market for securities financing transactions in which the counterparties use custodial arrangements provided by JPMorgan Chase Bank or Bank of New York or another financial institution approved by the Board.

By order of the Board of Governors of the Federal Reserve System, September 14, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–21792 Filed 9–18–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA08

Golden Parachute Payments and Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Correcting Amendments.

SUMMARY: This document contains a correction to §§ 1231.3 and 1231.4 of the interim final regulation concerning Golden Parachute Payments and Indemnification Payments published in the **Federal Register** on Tuesday, September 16, 2008. These sections should read ''Reserved.''

DATES: *Effective Date:* September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel (OFHEO), telephone (202) 414–3788 or Christopher Curtis, General Counsel (FHFB), telephone (202) 408–2802 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Need for Correction

As published on September 16, 2008, the interim final regulation contained clerical errors, which these amendments correct.

List of Subjects in 12 CFR Part 1231

Golden Parachutes, Government-Sponsored Enterprises, Indemnification.

■ Accordingly, part 1231 of Title 12 CFR Chapter XII is corrected by making the following correcting amendments:

PART 1231—GOLDEN PARACHUTE PAYMENTS AND INDEMNIFICATION PAYMENTS

■ 1. The authority citation for part 1231 continues to read as follows:

Authority: 12 U.S.C. 4518(e).

§ 1231.3 [Reserved]

■ 2. Section 1231.3 is removed and reserved.

§ 1231.4 [Reserved]

■ 3. Section 1231.4 is removed and reserved.

Dated: September 15, 2008.

James B. Lockhart, III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–21903 Filed 9–16–08; 11:15 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[Docket No. USCBP–2008–0076; CBP Dec. 08–40]

RIN 1505–AB99

Extension of Import Restrictions Imposed on Archaeological Material From Cambodia

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends Customs and Border Protection (CBP) regulations to reflect both continuing and new import restrictions on certain archaeological material from Cambodia. Import restrictions that were previously imposed by CBP Decision 03–28 on certain stone, metal, and ceramic archaeological materials that are due to expire on September 19, 2008, are extended. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determination for the extension of import restrictions that previously existed and for amending the agreement so that it applies also to archaeological material of the Bronze and Iron Ages. Accordingly, these import restrictions will remain in effect until September 19, 2013, and title 19 of the CBP regulations is being amended to reflect this amended bilateral agreement. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the 1970 Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This document also contains the amended Designated List of Archaeological Material that describes the articles to which the restrictions apply, including the new categories of objects (glass and bone) and the additional subcategories of stone and metal objects from the Bronze and Iron Age.

DATES: *Effective Date:* This final rule is effective on September 19, 2008.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George F. McCray, Esq.,

Chief, Intellectual Property Rights and Restricted Merchandise Branch, (202) 572–8710. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 863–6558.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with Cambodia on September 19, 2003, concerning the imposition of import restrictions on Khmer archaeological material from the 6th century through the 16th century A.D. in Cambodia. On September 22, 2003, CBP published CBP Decision 03–28 in the **Federal Register** (68 FR 55000), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, which subsumed the emergency import restrictions of 1999, and included a list designating the types of archaeological material covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are ''effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists'' (19 CFR 12.104g(a)).

Amended Bilateral Agreement

Consistent with expressed interest in an extension of the agreement from the Royal Government of Cambodia and with the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, made the requisite determinations on June 13, 2008, that the cultural heritage of Cambodia continues to be in jeopardy from the pillage of the archaeological materials described further below in the list of designated materials, and that, therefore, the import restrictions on certain stone archaeological materials from Cambodia that were previously imposed by emergency import restrictions under Treasury Decision (T.D.) 99–88 (64 FR 67479, December 2, 1999) and then extended by CBP Decision 03–28 (68 FR 55000, September 22, 2003) to include certain stone, metal, and ceramic archaeological materials, are extended for an additional five year period until September 19, 2013, and include additional subcategories of objects and new categories of glass and bone objects from the Bronze and Iron Age. Accordingly, the title of the bilateral agreement was amended to read: ''Memorandum of Understanding between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Archaeological Material from Cambodia from the Bronze Age through the Khmer Era.''

By exchange of diplomatic notes the agreement was extended and amended on August 26, 2008. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions on the currently protected cultural property as well as the new categories and subcategories from the Bronze Age (c. 1500 B.C.–500 B.C.) and the Iron Age (c. 500 B.C.–550 A.D.) in the amended bilateral agreement.

Amended Designated List

The Designated List of articles that are protected pursuant to the bilateral agreement, as amended, on Archaeological Material from Cambodia from the Bronze Age (c. 1500 B.C.) through the sixteenth century (16th c. A.D.) has been revised. We note that subcategories of objects from the Bronze and Iron Ages have been added, as well as new categories, such as glass and bone, pursuant to 19 U.S.C. 2606.

List of Archaeological Material From Cambodia From the Bronze Age (c. 1500 B.C.) Through the 16th Century A.D.

Restricted archaeological material from Cambodia includes the categories listed below. The following list is representative only.

I. Stone

This category consists largely of materials made of sandstone, including many color shades (grey to greenish to black, pink to red and violet, and some yellowish tones) and varying granulosity. Due to oxidation and iron content, the stone surface can become hard and take on a different color than the stone core. These surface colors range from yellowish to brownish to different shades of grey. This dense surface can be polished. Some statues and reliefs are coated with a kind of clear shellac or lacquer of different colors (black, red, gold, yellow, brown). The surface of sandstone pieces can also however be quite rough. Chipped surfaces can be white in color. In the absence of any systematic technical analysis of ancient Khmer stonework, no exact description of other stone types can be provided. It is clear however that other types of stone were also used (some volcanic rock, rhyolite, and schist, etc.), but these are nonetheless exceptional. Some quartz objects are also known. Precious and semi-precious stones were also used as applied decor or in jewelry settings.

Different types of stone degradation can be noted. Eroded surfaces result from sanding (loss of surface grains), contour scaling (detachment of surface plaques along contour lines), flaking, and exfoliation. The stone can also split along sedimentation layers. Chipping or fragmentation of sculpted stone is also common.

Stone objects included here come under several periods: Bronze Age (c. 1500 B.C.–500 B.C.), Iron Age (c. 500 B.C.–550 A.D.), pre-Angkorian (6th–9th c.), Angkorian (9th–14th c.), and post-Angkorian (14th–16th c.). Many stone objects can be firmly assigned to one of these periods; some, notably architectural elements and statues, can be further assigned a specific style and a more precise date within the given period.

A. Sculpture

1. Architectural Elements

Stone was used for religious architecture in the pre-Angkorian and Angkorian periods. The majority of ancient Khmer temples were built almost entirely in stone. Even for those temples built primarily in brick, numerous decorative elements in stone were also employed. Only small portions of early post-Angkorian edifices were built in stone. The architectural elements that follow are therefore characteristic of pre-Angkorian and Angkorian times. The state of the material varies greatly, some objects being well preserved, others severely eroded or fragmented. The sculpture of some pieces remains unfinished.

a. Pediments. Pediments are large decorative stone fixtures placed above temple doorways. They are triangular in shape and composed of two or more separate blocks that are fitted together and sculpted with decorative motifs. The ensemble can range from approximately 1–3 meters in width and 1–3 meters in height. Motifs include floral scrolls, medallions, human figures, and animals. A whole scene from a well-known story can also be represented.

b. Lintels. Lintels are rectangular monoliths placed directly above temple entrance gates or doorways, below the pediments described above. They are decorated with motifs similar to those of pediments. They can reach up to nearly

one meter in height and one and one half meters in width.

c. False doors. Three of the four doorways of a temple sanctuary are frequently ''false doors''; that is, though they are sculpted to look like doors, they do not open. They bear graphic and floral motifs, sometimes integrating human and animal figures. These doors can reach up to more than two meters in height and more than one meter in width. They can be monolithic or composed of separate blocks fitted together.

d. Columnettes. Columnettes are decorative columns placed on either side of a temple door entrance. They can be sculpted in deep relief out of a temple doorway and therefore remain attached to the doorway on their back side. The earliest columnettes are round and sculpted with bands which themselves are sculpted with decorative motifs. Later in the Angkorian period, the columnettes are octagonal in shape and bear more complex and abundant sculpted decor on the concentric bands. This decor includes graphic designs (pearls, diamond shapes, flowers, etc.) repeated at regular intervals along the length of the column. The base of the column is square and is also sculpted with diverse motifs and figures. The columnettes can reach around 25 cm. in diameter and more than two meters in height.

e. Pilasters. Pilasters are decorative rectangular supports projecting partially from the wall on either side of a temple doorway. They are treated architecturally as columns with base, shaft, and capital. Motifs include floral scrolls and graphic designs of pearls, diamond shapes, etc., as well as human or animal figures. They range in width from approximately 20–30 cm. and can reach a height of more than two meters.

f. Antefixes. Antefixes are decorative elements placed around the exterior of each level of temple tower. They are small free-standing sculptures and can take multiple forms, including but not limited to graphic designs, animal figures, human figures in niches, and miniature models of temples.

g. Balustrade finials. Long balustrades in the form of mythical serpents are found in many Angkorian temples. Often, these line either side of the entrance causeways to temples. The ends of the balustrade take the form of the serpent's multiple cobra-like heads.

h. Wall reliefs. Much of the surface area of most temples is sculpted with decorative reliefs. This decor includes graphic designs and floral motifs as well as human or animal figures. The figures can range in size from just a few centimeters to more than one meter in height. They can be integrated into the decor or set off in niches. Narrative scenes can also be represented.

i. Other decorative items. Other decorative items include wall spikes, roof tile finials, sculpted steps, and other architectural decorations.

2. Free-Standing Sculpture

The pre-Angkorian and Angkorian periods are characterized by extensive production of statuary in stone. Some stone statuary was also produced during the post-Angkorian period. This statuary is relatively diverse, including human figures ranging from less than one half meter to nearly three meters in height, as well as animal figures. Some figures, representations of Indian gods, have multiple arms and heads. Figures can be represented alone or in groups of two or three. When male and female figures are presented together as an ensemble, the female figures are disproportionately smaller than their male counterparts. Some are part-human, part-animal. Figures can be standing, sitting, or riding animal mounts. Many figures are represented wearing crowns or special headdresses and holding attributes such as a baton or a conch shell. Clothing and sometimes jewelry are sculpted into the body. Though statues are generally monolithic, later post-Angkorian statues of Buddha can have separate arms sculpted in wood and attached to the stone body. Many statues were once lacquered in black, dark brown, red, or gold colors and retain lacquer traces. Some yellow lacquer is also found.

a. Human and hybrid (part-human, part-animal) figures. Examples include statues of the eight-armed god and the four-armed god, representations of Buddha in various attitudes or stances, and female and male figures or deities, including parts (heads, hands, crowns, or decorative elements) of statuary and groups of figures.

b. Animal figures. Examples include bulls, elephants, lions, and small mammals such as squirrels.

c. Votive objects. A number of more abstract sculptures were also the object of religious representation from pre-Angkorian to post-Angkorian times. Examples include ritual phallic symbols and sculpted footprints of Buddha.

d. Pedestals. Pedestals for statues can be square, rectangular, or round. They vary greatly in size and can be decorated with graphic and floral decor, as well as animal or human figures. They are usually made of numerous components fitted together, including a base and a top section into which the statue is set.

e. Foundation deposit stones. Sacred deposits were placed under statues, as well as under temple foundations and in temple roof vaults, from pre-Angkorian to post-Angkorian times. Marks on these stones indicate sacred configurations, which could contain deposits such as gold or precious stones.

3. Stelae

a. Sculpted stelae. Free-standing stelae, sculpted with shallow or deep reliefs, served as objects of worship and sometimes as boundary stones from pre-Angkorian to post-Angkorian times. Examples include stelae with relief images of gods and goddesses, Buddhas, figures in niches, and other symbols.

b. Inscriptions. Texts recording temple foundations or other information were inscribed on stone stelae from pre-Angkorian to post-Angkorian times. Such texts can also be found on temple doorjambs, pillars, and walls. The stelae are found in a number of different shapes and sizes and can also bear decorative reliefs, for example a bull seated on a lotus flower.

4. Sculpture in Brick

Brick was used mainly in pre-Angkorian and some relatively early Angkorian religious architecture. Yet, typically, while the bodies of buildings were in brick, some of the decorative elements listed above-pediments, lintels, etc.-were in stone. The brick, of light orange color, was usually sculpted with a preliminary relief, which was then covered over with white stucco, itself sculpted along brick contours. Some brick reliefs seem however to have been fully sculpted and not meant to be covered in stucco. Brick temple reliefs include graphic design, as well as floral or animal decor. Human and animal figures can also be represented.

B. Jewelry

In the Bronze and Iron Ages, beads were made from semi-precious stones such as agate and carnelian. Agate beads are banded stone, black to light brown to white in their bands. These are usually carved into tubular shapes. Carnelian beads are reddish orange and glassy. These are usually ball-shaped. Bronze and Iron Age stone bracelets have triangular or rectangular cross-sections.

C. Chipped and Ground Tools

During the Bronze and Iron Ages, chipped and ground tools such as adzes, whetstones, and arrowheads were made of metamorphic rock.

II. Metal

This category consists mainly of bronze objects. No singular alloy is characteristic of Cambodian bronzes, which contain varying degrees of

copper, zinc, lead, and iron. Surface colors can range from dark to light brown to goldish; a green patina is found on many objects. Some bronzes are also gilt. Some artwork in silver and gold also survives but is much less common.

Most objects were cast with the ''lost wax'' technique, by which a mold of the object is built around a full or hollow wax model; the wax is then melted out with hot metal, which then hardens in the mold. Because the mold must be destroyed to obtain the metal object, each casting is unique. Decor can be chiseled into the finished metal surface. As early as the Bronze and Iron Ages, objects demonstrate a very high degree of technical skill. The ''repousse'' technique, by which metal is beaten into shape in a concave mold, was also used.

Most of the objects presented here can be assigned to one of the periods defined for stone objects above: Bronze Age (c. 1500 B.C.–500 B.C.), Iron Age (c. 500 B.C.–550 A.D.), pre-Angkorian (6th–9th c.), Angkorian (9th–14th c.), and post-Angkorian (14th–16th c.). Some pieces, in particular statuary and ritual or domestic accessories with motifs akin to architectural decor in stone, can also be assigned to specific styles and corresponding time periods within the larger historical periods.

A. Statues and Statuettes

Khmer metal statuary is comparable to Khmer stone statuary in both thematic and stylistic treatment. (See general description of free-standing sculpture above.) Statues can be represented alone or in groups ranging from human figures on animal mounts to triads, to more complex ensembles including architectural structures and decor. Though some colossal statues are known in both pre-Angkorian and Angkorian times, metal statues are, generally, relatively smaller in scale than their stone counterparts. Colossal statues can reach more than two meters in height; fragments demonstrate that one reclining figure measured some six meters in length. Such colossal pieces are nonetheless rare.

Statuettes as small around as 15 cm. are common; larger statues more typically reach around one meter in height. Small-scale statues are generally composed of a single cast; separate pieces however can be placed together, for example on a single pedestal, to form an ensemble. Larger works can be composed of multiple pieces fitted together with joints which can be concealed by chiseled decor. Only some small statuettes are solid. Others are composed of two plaques, one for the front of the piece and the other for the back; the plaques are filled with a resin- or tar-based substance and soldered together. Larger pieces are hollow. It should be noted that the Bayon period (late 12th-early 13th c.) has left more bronze statuary than any other period.

Post-Angkorian bronze statues and statuettes, like their stone counterparts, take on certain characteristics of Siamese sculpture but can nonetheless usually be identified as Khmer due to certain types of decor and bodily form which maintain or develop on a specific Angkorian tradition.

1. Human and Hybrid (Part-human, Part-animal) Figures. Examples include standing male figures, Buddhas, four-armed male figures, female figures, gods, and goddesses, all in various attitudes and dress, including fragments of sculpture such as hands, arms, and heads.

2. Animal Figures. Animal representations in bronze resemble those in stone in both thematic and stylistic treatment. Statues and statuettes include primarily bulls, lions, and elephants with one or three trunks. Other animals, such as horses, are also represented but are less common. The only colossal animal images known date to the late 12th–early 13th c. Other animal figures, such as the mythical multiheaded serpent and mythical birds and monkeys, are also frequently found as decor of ritual or domestic objects.

3. Pedestals. Pedestals in bronze often appear to be simplified and reduced versions of their stone counterparts. One innovation of sculpting the base in openwork is to be noted.

B. Other Ritual and Domestic Objects

1. Special Objects Used in Ritual. Special ritual objects include bells, conch shells, and musical instruments such as tambourines, etc.

2. Containers. Ritual and domestic containers include such items as perfume holders, oil lamps or bowls, and boxes with decorative or sculptural features.

3. Decorative Elements from Ritual or Domestic Objects. In addition to the decorative accessory items noted below, there exist insignia finials for banner poles which often take the form of small human or animal figures.

4. Jewelry. Jewelry, including but not limited to rings, bracelets, arm bands, necklaces, and belts, could have been worn not only by people but also by statues. Bronze and Iron Age bracelets may be decorated with scrolls, spirals, and the heads of buffalo/cows. Different types of rings can be noted: Ring-stamps, rings with ornamental settings, rings with settings in the form of a bull or other animal, and rings with settings for stones.

5. Musical Instruments. Diverse percussion instruments, including varying sizes of bells, drums, gongs, and cymbals, were made in bronze. These may carry geometric designs and/or images of humans and animals.

6. Animal Fittings. In addition to bells to be suspended around the necks of animals, common to both the Angkorian and the post-Angkorian periods, various kinds of decorative animal harness accessories are known in post-Angkorian times.

C. Architectural Elements

Metal architectural elements include ceiling or wall plaques sculpted with flowers or other motifs, floral plaques, and panels.

D. Weapons and Tools

Metal weapons and tools include arrow heads, daggers, spear tips, swords, helmets, axes, adzes, chisels, spoons, and sickles.

III. Ceramics

Bronze and Iron Age ceramics are primarily earthenwares with varying colors and surface treatments. Later ceramics include both glazed and unglazed stonewares. Stonewares, and particularly glazed wares, are characteristic of the Angkorian period (9th–14th c.). Khmer ceramics production primarily concerned functional vessels (vases, pots, etc.) but also included sculpture of figurines and architectural or other decorative elements. Angkorian period vessels were generally turned on a wheel and fired in kilns. Vessels range in size from around five to at least 70 cm. in height. Glaze colors are fairly limited and include creamy white, pale green (color of Chinese tea), straw-yellow, reddish-brown, brown, olive, and black. Light colors are generally glossy, while darker colors can be glossy or matte. Some two-colored wares, primarily combining pale green and brown, are also known. Decoration is relatively subtle, limited to incisions of graphic designs (criss-crosses, striations, waves, etc.), some sculpted decor such as lotus petal shapes, and molding (ridges, grooves, etc.); some applied work is also seen. Most decoration is found on shoulders and necks, as on lids; footed vessels are typically beveled at the base. Many wasters (imperfect pieces) are found and are also subject to illicit trade.

A. Sculpture

Ceramic sculpture known to have been produced in Cambodia proper largely concerns architectural elements.

Though some figurines are known and are of notable refinement, statuary and reliefs in ceramics seem to be more characteristic of provincial production.

1. Architectural Elements. Some pre-Angkorian, Angkorian, and post-Angkorian period buildings, primarily but not exclusively royal or upper-class habitation, were roofed with ceramic tiles. The tiles include undecorated flat tiles and convex and concave pieces fitted together; a sculpted tile was placed as a decor at the end of each row of tiles. These pieces were produced in molds and can be unglazed or glazed. The unglazed pieces are orange in color; the glazed pieces are creamy white to pale green. Spikes placed at the crest of roof vaults can also be made in ceramics. These spikes were fit into a cylinder, also made of ceramics, which was itself fitted into the roof vault. Architectural ceramics sometimes have human heads and anthropomorphic or zoomorphic features.

2. Figurines and Ritual Objects. Figurines, statuettes, or plaques can include human, hybrid (part-human, part-animal), and animal figures. These are typically small in size (around 10 cm.). Ritual objects found in Cambodia proper are limited primarily to pieces in the shape of a conch shell, used for pouring sacral water or as blowing horns.

B. Vessels

1. Lidded Containers. Examples include round lidded boxes with incised or sculpted decoration, bulbous vases with lids, and jars with conical multi-tiered lids. Lids themselves include conical shapes and convex lids with knobs.

2. Lenticular Pots. Pots of depressed globular form are commonly referred to as lenticular pots. The mouth of the vessel is closed with a stopper.

3. Animal-shaped Pots. The depressed globular form can take animal shapes, with applied animal head, tail, or other body parts that can serve as handles. The animal-shaped pot is also found in other forms. Animal-shaped pots often contain remains of white lime, a substance used in betel nut chewing. Shapes include bulls, elephants, birds, horses, and other four-legged creatures.

4. Human-shaped Pots. Anthropomorphic vessels often have some applied and incised decoration representing human appendages, features, or clothing. The vessels are usually gourd-shaped bottles.

5. Bottles. This category includes a number of different kinds of vessels with raised mouths.

6. Vases. A number of different types of vases are grouped together under this general heading. Some are flat based and bulbous or conical. Others have pedestal feet. Some are characterized by their elongated necks. The ''baluster vases,'' for which Khmer ceramics are particularly known, have pedestal feet, conical bodies, relatively long necks, and flared mouths.

7. Spouted Pots. These are vessels, usually in the ''baluster vase'' form, that have short pouring spouts attached to the shoulder. Some spouted pots also have ring handles on the opposite shoulder.

8. Large Jars. Large barrel-shaped jars or vats have flat bases, wide mouths, short necks, and flattened everted rims. They are always iron glazed.

9. Bowls. Bowls with broad, flat bases and flaring walls that are either straight or slightly concave, ending in plain everted or incurving rims, usually have green or yellowish glaze, although some brown-glazed bowls are known. Some are decorated with incised lines just below the rim. Most have deep flanges above the base; some are plain. Small hemispherical cups on button bases bear brown glaze. Another form is the bowl on a pedestal foot.

IV. Glass

Bronze and Iron Age glass beads are usually very small (1–2 mm across) and come in a range of colors from blue, green, red and white. Other artifacts made of glass include spiral earrings and triangular bangle bracelets. The bracelets are light to dark green or blue-green and translucent.

V. Bone

Bone (and sometimes ivory or horn) beads, bangles, pendants, and combs are found at Bronze and Iron Age sites.

More information on import restrictions can be obtained from the International Cultural Property Protection Web site (*http://exchanges.state.gov/culprop*). The restrictions on the importation of these archaeological materials from Cambodia are to continue in effect for an additional 5 years. Importation of such materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

■ For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for

§ 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended:

■ a. In the entry for Cambodia, in the column headed ''Decision No.'' by adding ''extended by CBP Dec. 08–40'' after ''CBP Dec. 03–28'', and

■ b. In the entry for Cambodia, in the column headed ''Cultural Property'' by removing the reference to ''Khmer Archaeological Material from the 6th century through the 16th century A.D.'' and adding in its place ''Archaeological Material from Cambodia from the Bronze Age through the Khmer Era.''

Approved: September 16, 2008.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–22034 Filed 9–18–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 610, 640, 812, 814, 822, and 860

[Docket No. FDA–2008–N–0423]

FDA Regulations; Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of Monday, August 25, 2008 (73 FR 49941). The final rule made technical amendments to several FDA regulations. The document was published with two inaccurate citations in the first paragraph of the Background Section under Supplementary Information. This document corrects that error.

DATES: September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In FR Doc. E8–19654, appearing on page 49941 in the **Federal Register** of Monday, August 25, 2008 (73 FR 49941), the following correction is made:

On page 49941, in the first paragraph of the Background section under Supplementary Information, ''21 CFR 610.51'' is corrected to read as ''21 CFR 610.53'' and ''21 CFR 640.53'' is corrected to read as ''21 CFR 640.51''.

Dated: September 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21966 Filed 9–18–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 6364]

Amendment to the International Traffic in Arms Regulations: U.S. Munitions List Interpretation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to clarify that certain anti-tumor drugs are not within the definition of ''chemical agents.''

DATES: *Effective Date:* This rule is effective September 19, 2008.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with an appropriate subject line.
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, *ATTN:* Regulatory Change, 12th Floor, SA–1, Washington, DC 20522–0112.
- *Fax:* 202–261–8199.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Lisa Wenger, Office of Defense Trade Controls Policy, Department of State; Telephone 202–663–2171 or FAX 202–261–8199; *e-mail: DDTCResponseTeam@state.gov*. *ATTN:* Regulatory Change.

SUPPLEMENTARY INFORMATION: In this regulatory change, we clarify that certain anti-tumor drugs are not considered defense articles under this subchapter; however, the know-how for production of nitrogen mustards or their salts is specifically retained on the U.S. Munitions List.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the provisions of section 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604).

Unfunded Mandates Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities, does not apply to this amendment.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports, U.S. Munitions List.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub.L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub.L. 105–261, 112 Stat. 1920.

■ 2. In § 121.1, paragraph (c) Category XIV is amended by adding NOTE 5 to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

(c) * * *

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* * * * *

Note 5: Pharmacological formulations containing nitrogen mustards and certain reference standards for these drugs are not considered to be chemical agents and are licensed by the Department of Commerce when:

(1) The drug is in the form of a final medical product; or

(2) The reference standard contains salts of HN2 [bis(2-chloroethyl) methylamine], the quantity to be shipped is 150 milligrams or less, and individual shipments do not exceed twelve per calendar year per end user.

Technical data for the production of HN1 [bis(2-chloroethyl)ethylamine]; HN2 [bis(2-chloroethyl)methylamine], HN3 [tris(2-chloroethyl)amine]; or salts of these, such as tris (2-chloroethyl)amine hydrochloride, remains controlled under this Category.

* * * * *

Dated: September 3, 2008.

Frank J. Ruggiero,

Acting Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. E8–21832 Filed 9–18–08; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0915]

RIN 1625–AA00

Temporary Safety Zone; Wreckage of the M/V NEW CARISSA, Pacific Ocean 3 Nautical Miles North of the Entrance to Coos Bay, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Pacific Ocean encompassed in the 1,000 yard radius surrounding the wreckage of the M/V NEW CARISSA located 3 nautical miles north of the entrance to Coos Bay, Oregon. The Captain of the Port Portland is taking this action to safeguard individuals and vessels involved in a salvage operation involving the M/V NEW CARISSA. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

DATES: This regulation is effective from 12:01 p.m. August 31, 2008, to 12 p.m. September 30, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0915 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call MST1 Jaime Sayers, Waterways Management, at (503) 240–9311. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to protect human safety of those involved in the salvage operations of the NEW CARISSA. Such action will be taken by limiting public access to the salvage area. For those same reasons under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule is related to the safety zone published in the **Federal Register** on June 27, 2008 (73 FR 36433). In that rule the Coast Guard established a temporary safety zone on the waters of the Pacific Ocean encompassed in the 1,000 yard radius surrounding the wreckage of the M/V NEW CARISSA located 3 nautical miles north of the entrance to Coos Bay, Oregon. The Captain of the Port Portland took that action to safeguard individuals and vessels involved in a salvage operation involving the wreck of the M/V NEW CARISSA.

With this rule, for the same reasons as stated above, the Coast Guard is establishing a safety zone in the same area because individuals involved in the salvage operation of the NEW CARISSA have not completed their task.

Entry into this safety zone is prohibited from 12:01 p.m. August 31, 2008 to 12 p.m. September 30, 2008, unless authorized by the Captain of the Port or his designated representative. This safety zone will be enforced by representatives of the Captain of the Port Portland. The Captain of the Port may be assisted by other federal, state, and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessels, personnel, and individual movements on the waters of the Pacific Ocean encompassed in the 1,000 yard radius surrounding the wreckage of the M/V NEW CARISSA located 3 nautical miles north of the entrance to Coos Bay, Oregon. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative. Coast Guard Personnel and local law enforcement will enforce this safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the safety zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a small area of the Pacific Ocean along the Oregon Coast encompassed in the 1,000 yard radius surrounding the wreckage of the M/V NEW CARISSA located 3 nautical miles north of the entrance to Coos Bay, Oregon. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone applies to a small portion of the Pacific Ocean, entities wishing to transit in the vicinity may pass outside of the safety zone to continue their transit. We will issue a broadcast notice to mariners on the affected portion of the Pacific Ocean.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 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 rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that under the instruction there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section in 165.T13–067 is added to read as follows:

§ 165.T13–067 Safety Zone; Wreckage of the M/V NEW CARISSA, Pacific Ocean 3 Nautical Miles North of the Entrance to Coos Bay, Oregon.

(a) Location. The following area is a safety zone: The waters of the Pacific Ocean encompassed by a 1000 yard radius surrounding the wreckage of the M/V NEW CARISSA located 3 NM north of the entrance to Coos Bay, Oregon.

(b) Enforcement period. This rule will be in effect from 12 p.m. September 2, 2008, to 12 p.m. September 30, 2008.

(c) Regulations. In accordance with the general regulations in Section 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

Dated: September 2, 2008.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port Portland.

[FR Doc. E8–21886 Filed 9–18–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD53

Special Regulation: Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Final Rule.

SUMMARY: This final rule provides for the protection of the Western Snowy Plover (Charadrius alexandruinus nivosus), a species listed as threatened under the Endangered Species Act. Western Snowy Plovers spend approximately 10 months of the year within Golden Gate National Recreation Area (GGNRA), both at Crissy Field and Ocean Beach. This rulemaking will provide temporary protection for plovers in those two areas until a permanent determination is made through the planning process for the entire park. The park is developing a Dog Management Plan/Environmental Impact Statement (EIS) and special regulations for dog management, which are expected to be completed by winter 2010.

DATES: This rule is effective on October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Brian O'Neill, General Superintendent, Golden Gate National Recreation Area, Fort Mason, (415) 561–4728.

SUPPLEMENTARY INFORMATION:

Background

In November 2006 and July 2007, Golden Gate National Recreation Area (GGNRA) adopted emergency regulatory provisions under 36 CFR 1.5, requiring all dogs to be on-leash when plovers are present on a portion of Crissy Field designated as the Wildlife Protection Area (WPA) and on a portion of Ocean Beach designated as the Snowy Plover Protection Area (SPPA). Emergency restrictions in these two areas were established for the protection of the federally listed Western Snowy Plover. These emergency restrictions are temporary and necessary until the completion of this rulemaking.

Habitat degradation caused by human disturbance, urban development, introduced beachgrass (Ammophila spp.), and expanding predator populations has resulted in a decline in active nesting areas and in the size of the breeding and wintering populations. (Source: *Recovery Plan for the Pacific Coast Population of the Western Snowy Plover* (*Charadrius alexandrinus nivosus*), Volume 1: Recovery Plan, 8/13/2007.)

The plover's threatened status affords it protection from harassment. The regulations that implement the Act define ''harass'' as ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.''

On November 20, 2007, the NPS published in the **Federal Register** a proposed rule (72 FR 65278) to provide for the protection of the Western Snowy Plover (Charadrius alexandruinus nivosus), a species listed as threatened under the Endangered Species Act. A 60-day public comment period closed on January 22, 2008. The National Park Service (NPS) received 1,574 comments on the proposed rule.

Summary of Comments

Enforcement (This topic was the subject of the greatest number of comments.)

1. *Comment:* Stiff fines are essential and a stronger presence of park law enforcement personnel is both necessary and appropriate. Increased enforcement of current rules would be insufficient to protect the Western Snowy Plover (hereafter referred to as plover). Commenters also cited a lack of enforcement action by park rangers. Some commenters supporting the proposed rule believed that strong enforcement of a clearly understood rule would be the best protection measure for the plover.

Recommendations offered regarding improved enforcement included:

- Focusing on enforcement of existing rules for wildlife harassment rather than creating new rules,
- Developing an adequate enforcement plan and obtaining necessary funding, and
- Increasing park ranger presence at the two sites and issuing citations to those visitors whose dogs actually chase and harass plovers.

Response: The park will implement several measures to support enforcement of regulations to protect the plovers. A Plover Docent Program for education and outreach was established in March 2008. Seasonal staff will be added to allow increased enforcement throughout the park, including plover areas. Additionally, the final rule has specific starting and ending dates for the annual restriction which will aid both public understanding and enforcement. Fines for violations of park regulations are determined by the Federal Court and are not within the purview of the NPS.

Fences/Enclosures

2. *Comment:* Some commenters felt fences or other enclosures were a problem and others felt they were a possible solution for accommodating off-leash dog recreation. Those who opposed fencing/enclosures either felt they would be too confining for dogs and their owners or that there were already too many fences in the park/city/world. Those who proposed the idea believed fences/enclosures would be a good compromise that would still allow dogs a space to play.

Response: This rule was developed to protect the snowy plover in the interim while the park completes the Dog Management Plan/EIS. The possibility of using fencing or barriers to separate dogs from the plover protection areas will be analyzed in the Dog Management EIS currently being developed by the NPS.

Education

3. *Comment:* There is a need for more signs and education as part of the solution. Commenters stated that they believe educating visitors and dog owners about the need to protect the plover and its habitat would be sufficient to keep their dogs away from plovers.

Response: The park will implement several educational measures as well as increase enforcement of regulations to protect the plovers, as the NPS believes that enhanced education and outreach by itself would not be sufficient to protect plovers. The NPS feels that setting specific start and end dates for the restrictions in this final rule will increase public understanding and compliance of the restrictions. The park also instituted a Plover Docent Program that will provide on site education and outreach; education will be improved by the addition of interpretive signs.

Duration of Restriction

4. *Comment:* Seasonal closures would complicate enforcement during open periods when the plover is present. Commenters expressed concern that the proposed restriction would not be in force year-round and stated that the rule was ambiguously worded and created confusion since it identified two different dates (July 1 to May 1 or when the plover is no longer present) for lifting the seasonal restriction.

Response: To clarify the seasonal restriction, a firm ending date of May 15 replaced language that removed the restriction when monitoring determined that the species was no longer present. Long term NPS monitoring data shows the last plovers having departed from both plover protection areas by May 15. Therefore, using May 15 as the date the restriction terminates will still enable the NPS to protect the plovers. The final rule will clearly state that this annual restriction starts on July 1 and ends on May 15. All signs and public information will be updated to clearly reflect these dates.

Habitat Concerns

5. *Comment:* If the proposed rule were not implemented there would be a resulting loss of plover habitat. Commenters also stated that in an urban setting it was necessary to maintain spaces where a species could live in order to support its survival and to provide enjoyment for area residents. Other comments characterized the proposed rule as a response to the oil spill that took place within the San Francisco Bay several months earlier. Commenters also stated that there were plenty of locations outside of the park where the plover could live.

Response: The plover is listed as a threatened species under the Endangered Species Act (ESA), and protection for plovers is required in NPS areas used as habitat for plovers. This rule is in response to this requirement of the ESA rather than to any particular event such as the oil spill.

Plovers continue to be threatened by degradation and loss of breeding and wintering habitat caused by expanding beachfront development, encroachment of introduced European beach grass and intense recreational use of beaches. The Ocean Beach and Crissy Field sites are areas consistently used by plovers.

Protection

6. *Comment:* Protection of both plover habitat and the species itself is an important consideration because dogs pose a risk to plovers and their long-term survivability. Commenters stated that it was necessary to protect or ''Save the Plover.'' Recommendations made by those that favored increased protection for the plover included:

- Changing the rule from temporary to permanent,
- Closing the Ocean Beach Plover Protection Area (SPPA) to dogs (extending from Stairwell 21 to Sloat Boulevard),
- Closing the Crissy Field Wildlife Protection Area (WPA) year-round to all public access, and
- Establishing a permanent ban on dogs at both Ocean Beach and Crissy Field.

Response: This rulemaking will provide temporary protection for plovers in these two areas until a permanent determination is made through the Dog Management Plan/EIS and a special regulation for dog management at GGNRA, which is expected to be completed by early 2010. The EIS will analyze a range of options and some of these recommendations may be included in the EIS.

Park as Recreation Area

7. *Comment:* It is incumbent on GGNRA to consider human recreation needs first and foremost. GGNRA does not have designated wilderness nor is it a nature preserve and the park's enabling legislation and park purpose are aimed at meeting the recreational needs of an urban area.

Response: The park's enabling legislation (Pub. L. 92–589) states that GGNRA ''shall utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management. In carrying out the provisions of this Act, the [Secretary] shall preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area.'' Courts have decided that the GGNRA Act, together with the National Park Service Organic Act, impose an overriding conservation mandate on the NPS. The NPS believes that this rule is in keeping with the goals of GGNRA's enabling legislation and the National Park Service Organic Act.

Inadequate Size of Closure Area

8. *Comment:* The proposed rule does not include the entire beach at Crissy Field and Ocean Beach. The ''imaginary boundaries'' developed for the closure areas do not coincide with a visitor's typical understanding of GGNRA boundaries, which would lead to confusion and a lack of compliance

Response: The areas restricted by this rule are those sites used by plovers while they are in the park. Plovers are particular in their habitat choices; within the park, they select wide, flat open beaches for foraging and resting where they can see potential predators approaching. These conditions are found in the Crissy Field Wildlife Protection Area and the Ocean Beach Plover Protection Area. In addition, the NPS will develop new signage and outreach materials to educate the public about the rule. These efforts will help to minimize any public confusion about the geographic areas in which the restriction applies.

Feces

9. *Comment:* The presence of feces left by dogs and the associated human health risks are a concern as well as the potential presence of pathogens, coupled with the lack of courtesy, makes the current management of dogs in the park unacceptable.

Response: This topic is not within the purview of this rule, but will be addressed in the Dog Management Plan/EIS currently being developed by NPS staff.

Off-Leash Dogs

10. *Comment:* Off-leash dogs and their effects on the safety of visitors, other dogs and other wildlife are a concern. Off-leash dogs should not be allowed in Golden Gate National Recreation Area without safeguards such as enclosures.

Response: This topic is not within the purview of this rule, but will be addressed in the Dog Management Plan/EIS currently being developed by the NPS.

Dogs Unwelcome/Uninvited Jumping on Visitors

11. *Comment:* Uncontrolled off-leash dogs will run at and jump on beach users. Some commenters stated they no longer go to the park because of the perceived threat of attack or being knocked down by dogs, especially older persons or the parents of young children.

Response: This rule requires dogs to be kept on a leash not exceeding six feet in length while they are in the plover protection areas between July 1 and May 15. The Dog Management Plan/EIS will address visitor safety in dogwalking areas parkwide.

Lack of Consensus

12. *Comment:* The science used in developing the proposed rule is inadequate. The science the NPS relied upon is flawed or simply wrong, including the studies that the NPS conducted themselves. There is a lack of consensus within the scientific community about the impacts to plovers from human activities, and in particular, off-leash dogs. Commenters identified and submitted other studies that concluded that there are no impacts to plovers from off-leash dogs.

Response: The decision to publish a final rule was guided by section 2.1.2 of the *NPS Management Policies 2006*: ''Decision-makers and planners will use the best available scientific and technical information and scholarly analysis to identify appropriate management actions for protection and use of park resources''. In addition to information provided by NPS monitoring and studies, the U.S. Fish and Wildlife Service's (FWS) 2007 final Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (Charadrius alexandrinus nivosus) identifies disturbance from off-leash dogs as a threat to the survivorship and fecundity of individual plovers, which could affect the species at the population level. The FWS recommends that land managers should prohibit pets on beaches where plovers traditionally nest or winter because non-compliance with leash laws can cause serious adverse impacts to plovers. If pets are not prohibited, they should be leashed and under control at all times.

Laws and Regulations

13. *Comment:* The NPS is required to follow laws, regulations, and policies that relate to environmental protection, including the Organic Act of 1916, the Endangered Species Act, and *NPS Management Policies 2006*. Some commenters were confused about the jurisdiction of the subject lands and the corresponding legal and policy requirements, but expressed strong support for environmental safeguards and action.

Response: This final rule meets the requirements of the Organic Act, the Endangered Species Act, the park's enabling legislation (Pub. L. 92–589) and *NPS Management Policies 2006*. The final rule will augment existing regulations which prohibit the harassment of wildlife.

City-Federal Agreement

14. *Comment:* GGNRA is violating the terms and intent of the ''City-Federal agreement''. The agreement required these two sites be used for recreation and not as a nature preserve.

Response: A letter of agreement between the City and County of San Francisco and the National Park Service, dated April 29, 1975, states that ''The National Park Service, acting through the General Superintendent, agrees to utilize the resources of GGNRA in a manner which will provide for recreational and educational opportunities consistent with sound principles of land use, planning and management, to preserve GGNRA in its natural setting and protect it from development and uses which would destroy the scenic beauty and natural character of the area, and to maintain the transferred premises in a good and sightly condition; * * *'' The deed granted to the federal government stated that the NPS is ''To hold only so long as said real property is reserved and used for recreation or park purposes * * *'' The final rule is in keeping with the terms of the agreement—the area is being used for recreation purposes while protecting its natural setting and character.

Stewardship

15. *Comment:* As a preservation-based agency, the NPS must act as stewards of the land and resources under its management, and when faced with a decision involving recreation and preservation of resources, the NPS should err on the side of resource preservation.

Response: The final rule allows the NPS to meet its obligations under the ESA and the Organic Act of 1916. The rule also follows management direction provided in *NPS Management Policies 2006*, section 1.5 which states: ''When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be predominant.''

Harassment and Flushing

16. *Comment:* Dogs have been seen chasing plovers and there is concern about effects of this activity on the species, including behavioral changes and breeding success. Other commenters have stated that they have not seen evidence of dogs impacting the plovers and that the proposed rule was not based on sound science, but rather was being used by the park to arbitrarily place limits on dogs and their owners.

Response: According to the USFWS Snowy Plover Recovery Plan dogs on beaches can pose a serious threat to western snowy plovers during both the breeding and non-breeding seasons. Unleashed pets, primarily dogs, sometimes chase plovers and destroy nests. Repeated disturbances by dogs can interrupt brooding, incubating, and foraging behavior of adult plovers and can cause chicks to become separated from their parents. At wintering sites such as Ocean Beach in San Francisco, California, off-leash dogs have caused frequent disturbance and flushing of plovers and other shorebirds. Off-leash dogs chase wintering plovers at this beach and have been observed to regularly disturb and harass birds (P. Baye, U.S. Fish and Wildlife Service, pers. comm. 1997). When shorebirds are flushed, they must spend more energy on vigilance and avoidance behaviors at the expense of foraging and resting activity (Burger 1993, Hatch 1997). Disruption of foraging and roosting may result in decreased accumulation of energy reserves necessary for shorebirds to complete the migration cycle and successfully breed (Burger 1986, Pfister *et al.* 1992). Dog disturbance at wintering and staging sites, therefore, may adversely affect individual survivorship and fecundity, thereby affecting the species at the population level (U.S. Fish and Wildlife Service. 2007. Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*). In 2 volumes. Sacramento, California. xiv + 751 pages). In addition, NPS monitoring data over the last several years have documented instances of dogs disturbing plovers. The NPS believes there is adequate scientific support for this final rule.

Protected Species Listing

17. *Comment:* GGNRA, as a federal agency, has a responsibility to protect the plover, a protected species listed under the ESA, according to the requirements of the law and for the values that protected species represent to society.

Response: The Western Snowy Plover's threatened status under the ESA requires the NPS to proactively conserve it and prevent detrimental effects on the species. This rulemaking will provide temporary protection for two areas until a permanent determination is made through the Dog Management/EIS for the entire park. As stated in *NPS Management Policies 2006*, section 4.4.2.3: ''The Service will fully meet its obligations under the NPS Organic Act and the Endangered Species Act to both proactively conserve listed species and prevent detrimental effects on these species.''

Off-Leash Exercise Opportunities

18. *Comments:* GGNRA is one of the few areas available to provide off-leash opportunities; dog owners need these park areas to exercise their dogs. Commenters stated that dogs had ''rights'' and watching them run in the surf and on the beaches give both the dogs and their owners great pleasure. Those opposed to off-leash exercising felt there are plenty of other areas for dogs to run or exercise off-leash.

Response: The final rule does not eliminate the opportunity for off-leash dog walking at Ocean Beach and Crissy Field outside of the designated plover protection areas. Outside of the protected areas 0.99 miles of beach at Crissy Field, as well as the Crissy Field airfield and promenade, are available for off-leash dog walking. At Ocean Beach and Fort Funston 2.4 miles of beach are available for off-leash dog walking. Other areas that provide additional off-leash dog opportunities also exist both within GGNRA and outside of the park.

Public Access

19. *Comment:* Park visitors have a right to use all recreation sites as off-leash areas. Other commenters felt that dog owners had a responsibility to keep their dogs under control and did not have special rights or access privileges.

Response: As stated in section 1.5 of the *NPS Management Policies 2006*: ''An 'appropriate use' is a use that is suitable, proper, or fitting for a particular park, or to a particular location within a park. Not all uses are appropriate or allowable in units of the national park system, and what is appropriate may vary from one park to another and from one location to another within a park * * *. When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be predominant.'' The NPS believes that the plover protection areas are not appropriate for off-leash dog recreation when the plover is present.

Changes to the Final Rule

After examining all public comments received and additional monitoring data, the NPS is amending the final rule to set firm dates for both the start and end of the annual restrictions (July 1 to May 15) to clarify the seasonal restriction and improve compliance with the regulation. In the proposed rule the annual end date would have been determined by monitoring the departure of plover from these areas. The firm ending date of May 15 replaced language that removed the restriction when monitoring determined that the species was no longer present. Long term NPS monitoring data show the last plovers having departed from both plover protection areas by May 15. Therefore, using May 15 as the date the restriction terminates will still enable the NPS to protect the plovers. The final rule will clearly state that this annual restriction starts on July 1 and ends on May 15.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Most of the areas proposed to be restricted through this rulemaking have been closed or restricted for the same activity through the park's compendium in the past, although those closures or restrictions were not published in the **Federal Register**. Since this is not a new closure or restriction, and because opportunities for off-leash dogwalking still exist in these areas, the proposed rule will not significantly affect the existing patterns of park users.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. GGNRA has received letters of concurrence for the emergency restrictions in these areas, and has begun informal consultation with U.S. Fish and Wildlife Service. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(3) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The primary purpose of this rule is to provide protection for a threatened species. The rule will require dogwalkers to leash their dogs when in specified areas. There will be no economic effect of this additional required action.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule will only affect those who choose to walk their dogs in two designated areas.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no costs associated with the requirement to leash dogs in these two designated areas.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary purpose of this regulation is to provide additional protection for a threatened species. This rule will not change the ability of United States based enterprises to compete in any way.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The restrictions under this regulation do not have a significant effect or impose an unfunded mandate on any agency or on the private sector. This rule applies only to Federal parkland administered by the National Park Service in GGNRA, and no costs will be incurred by any parties.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule does not apply to private property, or cause a compensable taking, there are no takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses dog walking in two areas of the Golden Gate National Recreation Area. The affected lands are under the administrative jurisdiction of the National Park Service.

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The Handbook for NPS Director's Order 12 contains a listing of Categorical Exclusions. Section 3.4 D(2) of the Director's Order 12 Handbook provides that ''minor changes in programs and regulations pertaining to visitor activities'' may be categorically excluded under NEPA. The proposed regulations for Ocean Beach and Crissy Field are actions that would result in minor changes to regulated visitor activities in these areas (transitioning seasonally from unleashed to leashed dog recreation). GGNRA has prepared all the appropriate Categorical Exclusion screening forms. These forms disclose that the adoption of these regulations would result in no measurable adverse environmental effects. Furthermore, no exceptional circumstances or conditions exist that would make use of a Categorical Exclusion inappropriate. As such, a Categorical Exclusion under NEPA is the appropriate form of NEPA compliance for these regulatory actions.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

Drafting Information: The primary authors of this rule are: Marybeth McFarland, Law Enforcement Specialist; Christine Powell, Public Affairs Specialist, Shirwin Smith, Management Analyst, Barbara Goodyear, Solicitor, PWRO; and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Add new paragraph (d) to § 7.97 to read as follows:

§ 7.97 Golden Gate National Recreation Area.

* * * * *

(d) *Dogs—Crissy Field and Ocean Beach Snowy Plover Areas.* (1) Dogs must be restrained on a leash not more than six feet in length starting July 1 and ending May 15, in the following areas:

(i) Crissy Field Wildlife Protection Area (WPA): Dog walking restricted to on-leash only in the area encompassing the shoreline and beach north of the Crissy Field Promenade (excluding the paved parking area, sidewalks and grass lawn of the former Coast Guard Station complex) that stretches east from the Torpedo Wharf to approximately 700 feet east of the former Coast Guard station, and all tidelands and submerged lands to 100 yards offshore.

(ii) Ocean Beach Snowy Plover Protection Area (SPPA): Dog walking restricted to on-leash only in the area which encompasses the shoreline and beach area west of the GGNRA boundary, between Stairwell 21 to Sloat Boulevard, including all tidelands and submerged lands to 1,000 feet offshore.

(2) Notice of these annual restrictions will be provided through the posting of signs at the sites, on maps identifying the restricted areas on the park's official website and through maps made available at other places convenient to the public.

Dated: September 5, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–21943 Filed 9–18–08; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division

Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Madison (FEMA Docket No.: B–7788).	City of Huntsville (08–04–1223P).	May 2, 2008; May 9, 2008; *Madison County Record*.	The Honorable Loretta Spencer, Mayor, City of Huntsville, 308 Fountain Circle, Huntsville, AL 35801.	April 29, 2008	010153
Arizona:					
Coconino (FEMA Docket No.: B–7785).	Unincorporated areas of Coconino County (07–09–1875P).	April 23, 2008; April 30, 2008; *Arizona Daily Sun*.	The Honorable Deb Hill, Chairman, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, AZ 86001.	April 15, 2008	040019
Yavapai (FEMA Docket No.: B–7785).	Town of Prescott Valley (07–09–1655P).	April 21, 2008; April 28, 2008; *Prescott Daily Courier*.	The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	April 14, 2008	040121
Yavapai (FEMA Docket No.: B–7785).	Unincorporated areas of Yavapai County (07–09–1655P).	April 21, 2008; April 28, 2008; *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	April 14, 2008	040093
Colorado:					
Jefferson (FEMA Docket No.: B–7780).	City of Lakewood (08–08–0276P).	April 10, 2008; April 17, 2008; *The Golden Transcript*.	The Honorable Bob Murphy, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226–3127.	August 18, 2008	085075
Jefferson (FEMA Docket No.: B–7780).	City of Wheat Ridge (08–08–0276P).	April 10, 2008; April 17, 2008; *The Golden Transcript*.	The Honorable Jerry DiTullio, Mayor, City of Wheat Ridge, 7500 West 29th Avenue, Wheat Ridge, CO 80033.	August 18, 2008	085079
Connecticut: New Haven (FEMA Docket No.: B–7785).	City of New Haven (07–01–1096P).	April 24, 2008; May 1, 2008; *New Haven Register*.	The Honorable John DeStefano, Jr., Mayor, City of New Haven, 165 Church Street, New Haven, CT 06510.	April 17, 2008	090084
Hawaii:					
Hawaii (FEMA Docket No.: B–7780).	Unincorporated areas of Hawaii County (08–09–0081P).	April 3, 2008; April 10, 2008; *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Room 215, Hilo, HI 96720.	August 8, 2008	155166
Maui (FEMA Docket No.: B–7797).	Unincorporated areas of Maui County (07–09–1848P).	February 21, 2008; February 28, 2008; *Maui News*.	The Honorable Charmaine Tavares, Mayor, Maui County, 200 South High Street, Wailuku, HI 96793.	February 12, 2008	150003
Illinois: DuPage (FEMA Docket No.: B–7780).	Village of Glen Ellyn (08–05–1365P).	April 11, 2008; April 18, 2008; *Wheaton Sun*.	The Honorable Gregory S. Mathews, President, Village of Glen Ellyn, 535 Duane Street, Glen Ellyn, IL 60137.	August 18, 2008	170207

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Massachusetts: Barnstable (FEMA Docket No.: B–7780).	Town of Falmouth (07–01–1083P).	April 3, 2008; April 10, 2008; *Cape Cod Times*.	The Honorable Kevin E. Murphy, Chairman, Board of Selectmen, 59 Town Hall Square, Falmouth, MA 02540.	August 8, 2008	255211
Minnesota:					
Olmsted (FEMA Docket No.: B–7785).	Unincorporated areas of Olmsted Count (07–05–4071P).	April 10, 2008; April 17, 2008; *Post Bulletin*.	The Honorable Ken Brown, Commissioner, Olmsted County Board of Commissioners, 151 Fourth Street Southeast, Rochester, MN 55904.	August 18, 2008	270626
Olmsted (FEMA Docket No.: B–7785).	City of Rochester (07–05–4071P).	April 10, 2008; April 17, 2008; *Post Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, 201 Fourth Street Southeast, Room 281, Rochester, MN 55904.	August 18, 2008	275246
Sherburne (FEMA Docket No.: B–7788).	City of Elk River (08–05–0592P).	April 16, 2008; April 23, 2008; *Star News*.	The Honorable Stephanie Klinzing, Mayor, City of Elk River, 13065 Orono Parkway, Elk River, MN 55330.	August 15, 2008	270436
Missouri:					
Cass (FEMA Docket No.: B–7776).	City of Harrisonville (07–07–1674P).	March 28, 2008; April 4, 2008; *Democrat Missourian*.	The Honorable Kevin W. Wood, Mayor, City of Harrisonville, 300 East Pearl Street, Harrisonville, MO 64701.	August 4, 2008	290068
Jackson (FEMA Docket No.: B–7780).	City of Grain Valley (07–07–1749P).	April 7, 2008; April 14, 2008; *The Blue Springs Examiner*.	The Honorable David Halphin, Mayor, City of Grain Valley, 711 Main Street, Grain Valley, MO 64029.	August 14, 2008	290737
Ohio:					
Franklin (FEMA Docket No.: B–7788).	City of Columbus (07–05–1194P).	April 10, 2008; April 17, 2008; *Columbus Dispatch*.	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, OH 43215.	August 18, 2008	390170
Franklin (FEMA Docket No.: B–7788).	Unincorporated areas of Franklin County (07–05–1194P).	April 10, 2008; April 17, 2008; *Columbus Dispatch*.	The Honorable Marilyn Brown, President, Franklin County, Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215.	August 18, 2008	390167
Warren (FEMA Docket No.: B–7785).	Village of Monroe (07–05–2593P).	April 10, 2008; April 17, 2008; *Pulse Journal*.	The Honorable Robert Routson, Mayor, City of Monroe, P.O. Box 330, Monroe, OH 45050–0330.	August 18, 2008	390042
Texas:					
Bexar (FEMA Docket No.: B–7788).	City of San Antonio (08–06–0040P).	May 5, 2008; May 12, 2008; *San Antonio Express-News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	April 28, 2008	480045
Collin (FEMA Docket No.: B–7780).	Town of Prosper (08–06–0164P).	April 3, 2008; April 10, 2008; *Allen American*.	The Honorable Charles Niswanger, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	August 8, 2008	480141
Denton (FEMA Docket No.: B–7785).	City of Roanoke (07–06–2276P).	May 1, 2008; May 8, 2008; *Denton County Chronicle*.	The Honorable Carl E. Gierisch, Jr., Mayor, City of Roanoke, 108 South Oak Street, Roanoke, TX 76262.	April 28, 2008	480785
Parker (FEMA Docket No.: B–7789).	Unincorporated areas of Parker County (08–06–0872P).	May 7, 2008; May 14, 2008; *Weatherford Democrat*.	The Honorable Mark Riley, Parker County Judge, One Courthouse Square, Weatherford, TX 76086.	April 29, 2008	480520
Tarrant (FEMA Docket No.: B–7780).	City of Keller (08–06–0002P).	March 28, 2008; April 4, 2008; *Keller Citizen*.	The Honorable Pat McGrail, Mayor, City of Keller, P.O. Box 770, Keller, TX 76244.	August 4, 2008	480602
Travis (FEMA Docket No.: B–7780).	Unincorporated areas of Travis County (07–06–1238P).	April 3, 2008; April 10, 2008; *Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	August 8, 2008	481026

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

Dated: September 4, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–21685 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 03–66, 03–67, 02–68, IB Docket No. 02–364, ET Docket No. 00–258; FCC 08–83]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On September 8, 2008, the Office of Management and Budget (OMB) approved the information collection requirements contained in § 27.1221(f) pursuant to OMB Control No. 3060–1094. The *BRS/EBS Fourth Memorandum Opinion and Order*, released on March 20, 2008 (FCC 08–83) and published in the **Federal Register** on May 8, 2008, 73 FR 26032, stated that the revision to 47 CFR 27.1221(f) will be effective upon OMB approval. This document announces the effective date of that published rule. Accordingly, the information collection requirements contained in that rule became effective on September 8, 2008.

DATES: The revision to § 27.1221(f) published at 73 FR 26032, May 8, 2008, will become effective on September 19, 2008.

FOR FURTHER INFORMATION CONTACT: John Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission at (202) 418–0797.

SUPPLEMENTARY INFORMATION: In the *BRS/EBS Fourth Memorandum Opinion and Order*, released on March 20, 2008 (FCC 08–83) and published in the **Federal Register** on May 8, 2008, 73 FR 26032, the Commission revised its rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) in the 2495–2690 MHz (2.5 GHz) band). The Commission required licensees to provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its geographic service area (GSA) within 30 days of receipt of a request from a co-channel, neighboring BRS/EBS licensee. This information will be used to prevent harmful interference to licensees' BRS/EBS operations. This interference protection requirement is a revision to the previously approved information collection OMB 3060–1094, and implements § 27.1221(f) of the Commission's rules as published in the **Federal Register** on May 8, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–21997 Filed 9–18–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2031; MB Docket No. 08–106; RM–11447]

Television Broadcasting Services; Castle Rock, Colorado

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by LeSEA Broadcasting of Denver, Inc., licensee of KWHD–DT, to substitute DTV channel 45 for DTV channel 46 at Castle Rock, Colorado.

DATES: The channel substitution is effective October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–106, adopted September 2, 2008, and released September 3, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Colorado, is amended by adding channel 45 and removing channel 46 at Castle Rock.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket Number: 080324461-81121-02]

RIN 0660–AA17

Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities and Households that Utilize Post Office Boxes

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Final rule.

SUMMARY: In this document, the National Telecommunications and Information Administration (NTIA) adopts certain changes affecting section 301.3 of its Digital-to-Analog Converter Box Coupon Program regulations. *See* 47 CFR § 301.3. Specifically, NTIA waives the ''eligible household'' and application requirements in subsection 301.3(a) and subsection 301.3(e), respectively, for individuals residing in nursing homes, intermediate care facilities, and assisted living facilities, subject to alternative application requirements specified herein. NTIA also amends paragraph 301.3(a)(2) to permit an otherwise eligible household that utilizes a post office box for mail receipt to apply for and receive coupons.

EFFECTIVE DATE: These regulations become effective October 20, 2008.

ADDRESSES: A complete set of comments filed in response to the Notice of Proposed Rulemaking is available for public inspection at the Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230. The comments can also be viewed at http://www.ntia.doc.gov and at http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Milton Brown at (202) 482–1816.

SUPPLEMENTARY INFORMATION:

I. Background

The Digital Television Transition and Public Safety Act of 2005 (the Act), among other things, authorized NTIA to create a Digital-to-Analog Converter Box Coupon Program (Coupon Program) to assist consumers to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service after the February 17, 2009 deadline for full power stations that convert to digital-only transmissions.[1] Specifically, section 3005 of the Act directed NTIA to implement and administer a program through which eligible U.S. households may obtain via the United States Postal Service a maximum of two coupons of $40 each to be applied towards the purchase of Coupon-Eligible Converter Boxes (CECB). To implement the Coupon Program, NTIA issued final regulations on March 15, 2007.[2]

Since NTIA began accepting applications for coupons on January 1, 2008, the Program has received a number of applications submitted by, or on behalf of, individuals residing in nursing homes and from applicants who utilize post office boxes for mail receipt. Because these applicants do not meet the current eligibility criteria under the Coupon Program regulations, these applications have been denied. On April 24, 2008, NTIA published a Notice of Proposed Rulemaking (NPRM) and Request for Comment in the **Federal Register** that proposed to waive the ''eligible household'' and application requirements in subsection 301.3(e) for individuals residing in nursing homes or other senior care facilities, subject to alternative application requirements.[3] The NPRM also proposed to amend paragraph 301(a)(2) to permit an otherwise eligible household that utilizes a post office for mail receipt to apply for and receive coupons subject to providing satisfactory proof of a physical residence.

II. Discussion

A. Nursing Home Residents

NTIA recognizes that our Nation's seniors, including those residing in nursing homes and other senior care facilities, constitute a vulnerable community that may rely on free, over-the-air television to a greater degree than other members of the public.[4] Unfortunately, the current eligibility requirements of the program do not permit seniors living in nursing homes to avail themselves of the Coupon Program. In the NPRM, NTIA proposed to waive the current household eligibility and application process set forth at 47 CFR § 301.3 and to permit these individuals to apply for and receive one coupon under certain circumstances. In the NPRM, NTIA also sought public comments on the best way to distribute coupons to verifiable residents of nursing home facilities so that the Coupon Program could be administered effectively within its existing resources. Finally, NTIA sought comments on ways that the coupons could be distributed in a manner that minimizes waste, fraud and abuse.

IDENTIFICATION OF NURSING HOMES OR OTHER SENIOR CARE FACILITIES

The initial challenge presented in the proposed rule is identifying and defining what constitutes nursing homes or other senior care facilities. As NTIA recognized in the NPRM, the terms ''nursing home'' and ''senior care facility'' are generic. There are many facilities that care for elderly residents that may be considered nursing homes in the general sense. These include assisted living facilities, continuing care retirement communities, convalescent rest homes and long-term care facilities. In the NPRM, NTIA proposed to use a facility's inclusion in the Online Survey, Certification and Reporting (OSCAR) database which is maintained by the U.S. Department of Health and Human Services (HHS) Center for Medicare and Medicaid Services (CMS) in cooperation with the state long-term care surveying agencies, as a basis for identifying facilities that would be recognized by the Coupon Program.[5] Such databases determine a nursing facility's eligibility to participate in the Medicare program based on a State's certification of compliance and a facility's compliance with civil rights requirements.[6] However, recognizing that not all nursing homes in the United States are included within the OSCAR database, NTIA sought comments on ways to ensure that all appropriate facilities not otherwise in the OSCAR database are identified and included in the proposed waiver standards.

The comments submitted in response to the NPRM revealed that there is no

[1] Title III of Pub. L. No. 109-171, 120 Stat. 4, 21 (2006).

[2] 47 CFR Part 301.

[3] Notice of Proposed Rulemaking and Request for Comment: The Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes and Households that Utilize Post Office Boxes; Waiver, 73 Fed. Reg. 22120 (April 24, 2008).

[4] *See* Testimony of John M. R. Kneuer, Assistant Secretary for Communications and Information, Before the Committee on Commerce, Science and Transportation, United States Senate (Oct. 17, 2007) (recognizing seniors as a targeted group that depends on over-the-air television to a greater extent than the general population), *available at* http://www.ntia.doc.gov/ntiahome/congress/2007/Kneuer__SenateCommerce__101707.htm.

[5] OSCAR is a compilation of all the data elements collected by surveyors during the inspection survey conducted at nursing facilities for the purpose of certification for participation in the Medicare and Medicaid programs. The institutional files are available at http://www.cms.hhs.gov/HealthPlanRepFileData/05__Inst.asp.

[6] *See generally*, 42 CFR Part 403.

clear definition for what constitutes a nursing home; rather there are many types of residential facilities that serve the elderly. Some commenters suggested that NTIA expand the proposed waiver to include facilities other than nursing homes. For example, the American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) recommended that NTIA expand the definition of nursing homes to include assisted living and developmental disabilities facilities.[7] On the other hand, the Metropolitan Area Communications Commission (MACC) suggested that the definition of nursing home include any residential care facility that serves three or more elderly residents in a group setting.[8] Another commenter suggested that the term ''eligible nursing home'' should include ''any asylum, institute, residence, lodging, annex, center, substitute home, house, mission or shelter devoted to the care of more than 2 elderly people, for 24 hours a day, for profit or non-profit.''[9]

Numerous commenters sought the expansion of the proposed waiver eligibility through the use of the term ''long-term care facility'' as opposed to ''nursing home.''[10] The term ''long-term care facility,'' as proposed by these commenters, would expand the eligibility of the proposed waiver request beyond nursing homes that care for the elderly. For example, some commenters' proposed definition of long-term facility could expand eligibility to include group homes, intermediate care facilities, schools, hospitals, and other institutional settings.[11] Moreover, commenters such as the National Citizen's Coalition for Nursing Home Reform, argue that age should not be an artificial barrier that would prevent some vulnerable adults and youths from having access to this benefit.[12] The Adult Home Advocacy Project (AHAP), citing a National Nursing Home Survey, stated that approximately 12 percent of nursing home residents are under 65 years of age.[13]

Some commenters focused on licensing by a state agency as a threshold for defining nursing homes for purposes of this action. For example, the University of Texas Houston Health Science Center, Center for Aging, stated that NTIA should define nursing home as any licensed facility that is in good standing with the state in which it operates.[14] Likewise, the AHAP stated that the waiver should include individuals residing in all licensed facilities, including adult homes, which are defined under New York state law as '''an adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator.'''[15] AHCA/NCAL recommended that if NTIA wanted a more comprehensive way of identifying and verifying care facilities, it should contact state assisted living residential care licensing agencies which are listed on NCAL's Assisted Living State Regulatory Review 2008.[16]

AHAP further suggested that NTIA refer to the eligibility requirements and definitions for the U.S. Department of Housing and Urban Development's (HUD) mortgage insurance program for nursing homes, intermediate care, board and care homes, and assisted-living facilities as provided in 12 U.S.C. § 1715.[17] HUD's regulations provide definitions for nursing homes, intermediate care facilities, board and home care facilities, and assisted living facilities. AHAP's recommendation was useful to NTIA in defining the eligibility criteria for the waiver.

NTIA agrees with commenters that the proposed waiver should be expanded to include facilities other than nursing homes. As noted in the NPRM, there are many facilities that care for elderly residents that may be considered ''nursing homes'' in the generic sense. While NTIA agrees that the residents of some of these facilities suggested by commenters, should be eligible for the waiver, commenters failed to define the scope of the facilities. For example, NTIA agrees with AHCA/NCAL that the waiver should be available to residents of assisted living facilities and developmental disabilities facilities who cannot currently obtain coupons under the current regulations. AHCA/NCAL, however, did not provide a definition of ''assisted living facilities'' or ''developmental disabilities facilities.'' Both of those terms could encompass many different types of facilities which may not be responsive to the purpose of this waiver. A similar problem exists for those commenters that suggested that NTIA simply make the waiver available to residents of ''long term care facilities.''

Likewise, MACC's comment that NTIA should recognize any residential care facility that serves three or more elderly residents in a group setting failed to provide an adequate rationale for adoption for a standard to be used by the Program. Finally, NTIA disagrees with the comment from the Puerto Rico Telecommunications Board that ''eligible nursing home should include 'any asylum, institute, residence, lodging, annex, center, substitute home, house, mission or shelter devoted to the care of more than 2 elderly people for 24 hours a day, for profit or non-profit.'' These terms provide no certainty for the Program to determine the scope of eligibility, or the function of these facilities.

Clear guidelines are necessary so that NTIA can effectively respond to a request for waiver. NTIA's intent is to ensure that individuals seeking a waiver, are indeed permanent residents of appropriate facilities. Accordingly, NTIA will make the waiver of eligibility under the Coupon Program only available to residents of nursing homes, intermediate care facilities, and assisted living facilities (collectively referred to hereafter as ''facilities'') as defined herein.[18] Intermediate care and assisted living facilities were added to the scope of eligibility because these facilities, as defined herein, provide many of these services for the elderly that are associated with nursing homes. NTIA also notes that these facilities encompass many of the facilities described by the commenters and may

[7] *See* American Health Care Association and the National Center for Assisted Living (AHCA/NCAL) Comments at 2.

[8] *See* Metropolitan Area Communications Commission (MACC) Comments at 1.

[9] *See* Puerto Rico Telecommunications Board (Puerto Rico) Comments at 4.

[10] *See* Office of the D.C. Long-Term Care Ombudsman Program (D.C. Ombudsman) Comments at 1.

[11] *See* Texas Long-Term Care Ombudsman Program, Texas Department of Aging and Disability Services (TX Ombudsman) Comments at 1; Ohio State Long-Term Care Ombudsman (OH Ombudsman) Comments at 1; D.C. Ombudsman Comments at 1; Advocacy Group for Elders Council at the Senior Source (Senior Source) Comments at 1.

[12] *See* National Citizen's Coalition for Nursing Home Reform (NCCNHR) Comments at 3-4.

[13] *See* Adult Home Advocacy Project of MFY Legal Services (AHAP) Comments at 3-4 (citing the National Nursing Home Survey 2008, Table 1, *available at* http://www.cdc.gov/nchs/data/nnhsd/Estimates/Estimates__Demographics__Tables.pdf#Table01.

[14] *See* University of Texas Houston Health Science Center, Center for Aging (Houston Center for Aging) Comments at 1.

[15] *See* AHAP Comments at 2; see also 18 N.Y. Comp. Codes R. & Regs. § 485.2(b).

[16] *See* Comments of AHCA/NCAL at 2; *see also* www.ncal.org for a list of state assisted living/residential care licensing agencies.

[17] AHAP Comments at 5.

[18] As recommended by AHAP, NTIA referred to the eligibility requirements and definitions for the U.S. Department of Housing and Urban Development's (HUD) mortgage insurance program for nursing homes, intermediate care, board and care homes, and assisted-living facilities as provided in 12 U.S.C. § 1715 to craft its definitions for eligibility for the waiver.

include residents who vary in age and needs.

Accordingly, NTIA will make the waiver of eligibility available to residents of *nursing homes* which are defined as ''a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed by the State for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.'' The waiver will also be available to residents of *intermediate care facilities* defined as ''a proprietary facility or facility of a private nonprofit corporation or association licensed by the State for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.'' Finally, NTIA will make the waiver available to residents of an *assisted living facility* defined as ''a public facility, proprietary facility, or facility of a private nonprofit corporation that: is licensed by the State and makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.''

Each facility described above must be licensed by a State. We agree with those commenters that focused on licensing by a state agency as a threshold for defining eligibility for the purpose of this waiver. Licensure of the facilities requires that they meet standards in service and care, that they are legitimate and verifiable operations, and are held to a higher standard as a long-term care facility. Licensure also ensures that facilities have passed state scrutiny, reducing the risk of fraud in applications for coupons. Moreover, licensing enables NTIA to verify that a facility is in fact one that caters to individuals that the program is attempting to reach.

ADMINISTRATION OF COUPON PROGRAM FOR RESIDENTS

Another challenge recognized in the NPRM is the application process for coupons by facility home residents. NTIA recognized that residents may need assistance in the application process to receive coupons. Therefore, NTIA proposed to allow residents to apply for a coupon, or an administrator of a nursing home facility or other persons designated to act on behalf of a nursing home resident.

To mitigate risks associated with the lack of readily available information to authenticate requests from or on behalf of nursing home residents, NTIA proposed an exception to our existing coupon eligibility and application requirements that would enable residents of eligible nursing homes, as defined herein, to apply for and receive coupons subject to certain additional information requirements not otherwise applicable to eligible households. Specifically, NTIA proposed to permit coupon applications to be submitted by, or on behalf of, a resident of an eligible nursing home using one of three methods, provided that only one application may be submitted for any individual.

INDIVIDUAL

NTIA proposed to permit an individual residing in an eligible nursing home (nursing home resident) to apply for one (1) coupon on his or her own behalf. In such circumstances, NTIA proposed that the coupon applicant be required to include: (i) his or her name, date of birth, and Social Security Number (SSN); (ii) the name and address of the eligible nursing home; and (iii) a certification from the nursing home resident as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service. In the NPRM, NTIA noted that in accordance with the Privacy Act of 1974, disclosure of an individual's SSN for purposes of this waiver process would be voluntary; however, additional information to verify the resident's identity will be solicited if the individual chooses not to disclose the SSN.[19] NTIA noted, however, that such additional process may delay the resident's receipt of a coupon.

A majority of commenters opposed the collection of a nursing home resident's SSN and date of birth.[20] These commenters argued that the collection of this information violates a nursing home resident's privacy and could lead to identity theft or fraud. Other commenters argued that this requirement should not be imposed on nursing home residents if it is not imposed on other coupon program applicants.[21] AHCA/NCAL argued that because the potential for fraud in this program is very low, NTIA should take the applicant's word on the application form, just as the agency takes the information of persons living in individual homes at face value.[22] One commenter agreed that NTIA should be allowed to collect SSNs and birthdates of nursing home residents, as well as the people applying on their behalf, but proper precautions should be in place to protect against identity theft.[23]

However, after careful consideration has been given to all of the arguments raised in the comments, NTIA has decided *not* to require facility residents to provide SSNs as part of the application process. NTIA's concern, when it initially proposed to require SSNs, was to reduce opportunities for fraud, waste and abuse in the program. NTIA believes that there are legitimate concerns regarding privacy and identity theft, which outweigh the potential for fraud in the program, and thus has determined that it is not necessary to collect this information. Likewise, NTIA will not require facility residents to provide their date of birth as part of the application process. All other provisions published in the proposed rule are adopted without change.

PERSON DESIGNATED TO ACT ON A RESIDENT'S BEHALF

As stated above, NTIA recognizes that nursing home residents may need assistance in the application process to receive coupons. Therefore, NTIA proposed to permit a person designated to act on behalf of a nursing home resident (the designee) to request one (1)

[19] The Privacy Act of 1974 provides that it ''shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security number.'' 5 U.S.C. § 552a.

[20] *See* Tiffany Smith Comments at 1; D.C. Ombudsman Comments at 2; MACC Comments at 2; AHCA/NCAL Comments at 3; National Association of Telecommunications Officers and Advisors (NATOA) Comments at 4; State of New York Consumer Protection Board (NY CPB) Comments at 2; AARP Comments at 5; Senior Source Comments at 1; City of Seattle Comments at 2; NCCNHR Comments at 2.

[21] *See* NATOA Comments at 4; City of Seattle Comments at 2.

[22] *See* AHCA/NCAL Comments at 2.

[23] *See* Houston Center for Aging Comments at 1.

coupon for that resident. In that case, NTIA proposed that the designee be required to provide all of the information required of the nursing home resident. In addition, NTIA propose that the designee supply: (i) his own name, address, SSN, and date of birth; and (ii) evidence that he is empowered to act on behalf of the resident (*e.g.*, power of attorney or birth certificate indicating familial relationship).

Commenters opposed the proposed requirement that third parties acting on a nursing home resident's behalf should provide SSNs and date of birth. For example, the Advocacy Group for Elders Council at the Senior Source argued that legally authorized representatives should not have to provide more information than their name and address to request coupons on behalf of a nursing home resident.[24] Some commenters argued that such a requirement was not only onerous, but may well convince a third party to withdraw the offer of assistance.[25] Other commenters complained that proof of power of attorney or proof of a familial relationship is also too burdensome.[26] Still others recommended that a box on the application indicating the relationship of the filer to the applicant would be sufficient.[27]

NTIA recognizes that residents of these facilities will need assistance from family and friends and, therefore, it will not implement a procedure that may deter that assistance. Requiring family members and friends to provide personal information may have the unintended consequence of deterring them from assisting residents in filling out an application and procuring a converter box. NTIA will permit family members and friends of the residents of the eligible facilities to apply on behalf of those residents, but it will not collect any personal information about the family member or friend. The family member or friend will only have to provide information as it relates to the resident. In other words, the family member or friend would provide the same information on an application that the resident would provide. All other requirements published in the proposed rule are adopted without change.

[24] *See* Senior Source Comments at 1.

[25] *See* D.C. Ombudsman Comments at 2; NATOA Comments at 5 (requirements for third-parties filing on behalf of residents could have chilling effect on the willingness of parties to assist residents in submitting applications).

[26] *See* AHCA/NCAL Comments at 3; Comments of AARP at 6.

[27] *See* Texas Ombudsman Comments at 2 (The application should include an additional line stating: ''I am completing this application for a resident in a long-term care facility.'')

ADMINISTRATOR OF A NURSING HOME OR OTHER SENIOR CARE FACILITY

NTIA also proposed in the NPRM that an administrator of an eligible nursing home may request one (1) coupon on behalf of a nursing home resident of the facility. As with the designee, the administrator would be required to provide for each resident for whom the request is being made all of the information specified in Option 1 above. In addition, NTIA proposed that the administrator be required to provide: (i) the name and address of the residents' eligible nursing home; (ii) the administrator's own name, SSN, and date of birth; and (iii) a copy of each facility's operating license indicating the administrator's authorization to administer the eligible nursing home.

Many commenters disagreed with the proposed requirements on administrators of nursing homes that would submit applications on behalf of nursing home residents. With respect to a copy of a facility's operating license, commenters argue that such a requirement would be onerous, and takes time away from providing care to nursing home residents.[28] Other commenters opposed NTIA's proposal to request the administrator's SSN.[29] The Office of the D.C. Long-Term Care Ombudsman Program, Legal Counsel to the Elderly, however, argued that requiring an administrator to produce an operating license would be sufficient, but requiring the submission of a SSN in addition to the license would be overly burdensome.[30]

Some commenters suggested that NTIA permit administrators or local coalition of senior care provider agencies to submit batch applications to NTIA for coupons on behalf of seniors that the coalition represents and that the coupons should be returned to the administrator or coalition rather than the individual seniors.[31] Another commenter suggested that if a facility administrator is given the right to request coupons on behalf of residents, others should be able to submit applications as well including social workers, long-term ombudsmen, and other medical staff who work at the facility.[32]

Based on the comments submitted, NTIA decided that it will permit administrators of long-term care facilities to apply on behalf of its residents, but it will not collect any personal information about the administrator. NTIA agrees with the commenters that there are legitimate concerns regarding privacy, identity theft and application burdens, which outweigh the potential for fraud in the program. The administrator will only have to provide information as it relates to the long-term care resident. In other words, the administrator would provide the same information on an application that the resident would provide. Moreover, NTIA will not require the administrator to provide a copy of the facility's operating license indicating the administrator's authorization to administer the facility as part of the application process. All other requirements published in the proposed rule are adopted without change.

[28] *See* AHCA/NCAL Comments at 3; ACTS Retirement-Life Communities (ACTS) Comments at 1; Wesley Manor Inc. Comments at 1.

[29] *See* Stephen Eggles Comments at 1.

[30] *See* D.C. Ombudsman Comments at 2.

[31] *See* Bridget Samuel Comments at 2; City of Seattle Comments at 2.

[32] *See* Houston Center for Aging Comments at 1.

APPLICABILITY OF OTHER PROVISIONS OF THE COUPON PROGRAM RULE

Consistent with section 301.4(d) of the Coupon Program rules, NTIA proposed to send coupons to nursing home residents via U.S. Postal Service to the address of the eligible nursing home specified in the application. In the case of a request from an administrator on behalf of a nursing home resident, NTIA proposed to mail the coupon directly to the requesting administrator at the address provided for the facility in the application. Because of NTIA's decision not to collect any personal information from an administrator, family member or friend that assists a resident in applying for a coupon, NTIA will mail the coupon directly to the nursing home resident at the address provided on the application. In any case, NTIA will only mail one (1) coupon in response to a successful waiver application.

NTIA also proposed that a coupon issued pursuant to this waiver process may only be used to purchase a CECB to be connected to a television set individually-owned by the nursing home resident on whose behalf the application was made. Moreover, CECBs purchased with coupons issued under this process may not be connected to television sets owned by the nursing home or senior care facility. One commenter recommended that the coupon program permit reimbursement for common area televisions because in many cases, these televisions are the only sets available to residents of very limited means.[33] NTIA was not persuaded by this comment. Televisions in common areas are more than likely owned by the facility, not the resident.

[33] *See* City of Seattle Comments at 2.

There is nothing in the record that indicates that businesses owning these facilities are vulnerable and in need of the assistance provided by the waiver. Therefore, coupons issued pursuant to this waiver may only be used to purchase converter boxes to be connected to a television set individually owned by a resident. Coupons are not to be used to purchase converter boxes for television sets owned by nursing homes, intermediate care facilities or assisted living facilities.

Finally, the NPRM made it clear that the Coupon Program would not reimburse individuals, family members, nursing home administrators or others who may be designated to act on behalf of residents for any costs these individuals may incur in obtaining coupons or providing other assistance related to obtaining and installing converter boxes. There were no comments submitted in response to that proposal. Therefore, NTIA will not, as part of this waiver, reimburse individuals, family members, nursing home administrators or others who may be designated to act on behalf of residents for costs incurred in obtaining coupons or providing other assistance related to applying for a coupon, or obtaining and installing a converter box.

Notwithstanding the proposals adopted as part of this waiver process, all other provisions of the Coupon Program regulations apply to nursing home residents.

WASTE, FRAUD AND ABUSE

NTIA is aware that residents of nursing homes, intermediate care and assisted living facilities constitute a vulnerable community in the United States.[34] In adopting this waiver, NTIA recognizes that it must be aware of the opportunities for fraud that this waiver may present. Vigilant methods to prevent and detect fraudulent coupon requests are a critical part of the coupon application process. Under the current application process, each household application for coupons is verified against certified U.S. Postal Service software to assure that the household is an authentic address, which is compared against a database of names and addresses of households who have already received coupons to prevent duplication.

In the NPRM, NTIA recognized the administrative challenges of providing coupons to residents of nursing homes. Accordingly, we requested information on ways that the agency could confirm that an individual making a coupon request actually resides in a nursing home. There were no comments submitted and NTIA is not aware of any databases of names that can be used to verify that an applicant is in fact a resident of a nursing home. Thus, there is no readily available method to verify whether the applications submitted under this waiver are indeed those of nursing home residents. For these reasons, NTIA will be vigilant of applicants filed under this waiver and will deny those applications that do not fall within the limitations of this waiver or appear to be fraudulent. NTIA will also immediately report all suspicious behavior to the appropriate authorities.

III. Applicants Utilizing Post Office Boxes for Mail Receipt

In this Final Rule, NTIA also revisits the Coupon Program regulations regarding the use of post office boxes for the receipt of coupons. The current Coupon Program regulations required applicants to provide a United States Postal Service mailing address in all but a few instances, such as applicants residing on Indian reservations, Alaskan Native Villages, and other rural areas to which the U.S. Postal Service does not deliver to residential addresses. NTIA has learned from consumer complaints that many applicants have sound reasons for utilizing a post office box for mail receipt. For example, a number of consumers appealing denials expressed concerns about the risk of identity theft as a result of stolen mail received via home delivery as the reason that they receive mail at a post office box. As a consequence, NTIA believes it was appropriate to revisit the regulations concerning the treatment of applications using post office boxes.

In the NPRM, NTIA proposed to amend subsection 301.3(a) of its regulations to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons if it can provide proof of physical residence. NTIA believes that requiring proof of physical residence will balance the need for preventive controls to protect the Coupon Program from waste, fraud, and abuse with the goal of the Program to provide assistance to those consumers that will need a converter box to continue receiving broadcast programming over the air using analog-only televisions.

Specifically, NTIA proposed that an applicant that utilizes a post office box for mail receipt must provide one or more of the following documents to satisfy the requirement for proof of physical residence: a valid driver's license containing the applicant's physical address; a utility bill (water, gas, electric, oil, cable, or landline telephone (*i.e.*, not wireless or pager)) bearing the applicant's name and physical address and issued within the sixty (60) days immediately preceding the date the coupon application is submitted; a government-issued property tax bill for the applicant's residence; an unexpired homeowner's or renter's insurance policy for the applicant's residence; an unexpired residential lease or rental agreement with the applicant's name and physical address. NTIA proposed to only use this information for identification, verification and tracking purposes for the Coupon Program. This information would be collected and maintained in a manner meeting the appropriate level of security required for personally identifiable information. Similar information is routinely collected by governmental agencies to verify residency.[35]

NTIA requested comments on other methods by which it could verify the physical address of an applicant who utilizes a post office box for mail receipt. NTIA also sought information about and estimates of the number of consumers with post office boxes that would apply for coupons if the proposed rule is implemented. The majority of commenters supported NTIA's proposal to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons. Commenters cited privacy concerns, security reasons and potential identity theft as reasons for choosing to receive mail via post office boxes.[36]

NATOA argued that because NTIA has already adopted regulations that permit post office box use by those who live on Indian reservations, Alaskan Native Villages, and other rural areas, similar regulations should be adopted for others who use post office boxes. Thus, NATOA concludes that the proposed proof of residence requirement is an unnecessary hurdle to consumers who opt to make use of post office delivery. Another commenter suggested a cross-reference of applications to find matching or substantially similar physical address and post office boxes.

[34] The websites of the Office of the Inspector General of the U.S. Department of Health and Human Services contains many fraud alerts and advisory opinions detailing unfair practices targeted at residents of nursing homes and other long-term care facilities. *See* http://www.oig.hhs.gov/fraud.html.

[35] *See e.g.*, Cal. Welfare and Institutions Code § 14007.1 (Deering 2007); D.C. Code Ann. § 39-309 (LexisNexis 2008); Ky. Rev. Stat. Ann. § 186.010 (LexisNexis 2008); N.C. Gen. Stat. § 20-7 (2007).

[36] *See* Foster B. Lewis Comments at 1; Anonymous Comment from Orlando, Florida at 1.

Upon careful consideration of the arguments raised in the comments, NTIA has decided to modify some of the requirements for Coupon Program applicants that utilize post office boxes for mail delivery. NTIA agrees with NATOA that because regulations are already in place for some groups that receive mail via post office boxes, similar regulations should also be adopted for others who use post office boxes. Applicants using post office boxes instead of home delivery will not be required to provide documentation to show proof of a physical residence. However, such applicants will be required to provide an actual physical address location along with their post office box number as part of the application process to allow NTIA to verify the legitimacy of the address.

WASTE, FRAUD AND ABUSE

NTIA remains concerned about waste, fraud, and abuse in the Coupon Program. As noted in the proposed rule, the Government Accountability Office (GAO) has specifically cited the misuse of post office boxes by applicants for benefits and recommended that preventive controls in a benefits program should, at a minimum, require that application data be validated against other government or third-party sources to determine whether an applicant has provided accurate information on their identity and place of residence.[38] Specifically, GAO recommended that applicants should be required to provide their physical address.[39] Consistent with GAO's recommendation, the Coupon Program's regulations retain the requirement that applicants be required to provide their physical residence in addition to their post office box number. Moreover, as recommended by GAO, the address of each applicant will be checked by NTIA's contractor against a third-party database to assist in validating eligibility.

Procedural Matters

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The collection of information referenced in the preamble has been submitted to the Office of Management and Budget and the approval will be published in a separate **Federal Register** notice.

In the NPRM, NTIA invited comment on providing additional information to identify residents in nursing homes. NTIA requested approval on three collection requirements including: (1) modified applications for individuals residing in nursing homes; (2) certifications from persons designated to act on behalf of the nursing home resident; and (3) certifications from the administrator of a nursing home or other senior care facility. In addition, NTIA invited comments on providing additional information to identify individuals utilizing post office boxes. NTIA requested approval on the collection requirement for individuals to product verification of the physical address.

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

NTIA received a total of thirty-nine comments and one late response to the NPRM. NTIA received a total of 24 comments (favorable and unfavorable) regarding information collection and recordkeeping requirements.

Nursing Homes

On the first PRA issue, whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, NTIA received thirteen (13) comments relating to the collection of personal information such as SSNs and birth dates. Most commenters who addressed this issue disagreed with the NTIA proposal to collect SSNs with the exception of the National Association of Broadcasters. Commenters argued that collecting the SSN was excessive,[40] a violation of privacy,[41] unnecessarily complicated and intrusive,[42] and unfair.[43] Several commenters argued that requiring the SSN for nursing home residents was discriminatory because other applicants were not required to provide such information.[44] Commenters also argued that collecting SSNs and date of birth information would expose a ''vulnerable community'' to identity theft.[45] One commenter stated that while collecting SSNs and date of birth information would be beneficial to prevent fraud some applicants may be reluctant to apply out of fear of identity theft.[46] Other commenters argued that collecting SSNs and date of birth information would have a chilling effect on willingness to apply on behalf of themselves or others.[47] Another commenter disagreed with the statement that SSNs are unique identifiers and suggested that NTIA at the very least consider using a portion of the SSN.[48]

NAB acknowledges that NTIA was taking measures to protect against the potential increased risk of waste, fraud or abuse.[49] One commenter argued that the need of senior citizens to continue their valued television service was heavily outweighed by the potential increase of risk.[50] One commenter argued that the rule exceeded congressional intent by requiring excessive personal information that would serve as a barrier to applying.[51]

One commenter suggested allowing third parties, such as senior service providers, to complete applications for seniors and/or nursing facilities. The commenter suggested that these providers visit facilities to determine which seniors need converters; file a batch application for each facility that would include the names of the seniors requiring coupons; receive coupons sent to the providers; and purchase and install the converter boxes.[52]

On the issue of collecting licensing information from each nursing home facility, one commenter argued that

[38] Hurricane Katrina and Rita Disaster Relief: Improper Fraudulent Individual Assistance Payments Estimated to be Between $600 Million and $1.4 Billion, Testimony, GAO-06-844T (GAO 2006 Testimony) (June 14, 2006).

[39] *Id.*

[40] Stephen Eggles Comments at 1.

[41] Tiffany Smith Comments at 1.

[42] MACC Comments at 2.

[43] AARP Comments at 5.

[44] Senior Source Comments at 1; The City of Seattle Comments at 2; NATOA Comments at 4; AARP Comments at 5; AHCA/NCAL Comments at 3.

[45] NATOA Comments at 4; AARP Comments at 5; AHCA/NCAL Comments at 3.

[46] Houston Center for Aging Comments at 1.

[47] NCCNHR Comments at 2; NY CPB Comments at 2.

[48] NY CPB Comments of at 2.

[49] National Association of Broadcasters (NAB) Comments at 11.

[50] *Id.*

[51] AARP Comments at 6.

[52] Bridget Samuel Comments at 1.

providing licensing information with each application was erroneous and unnecessary while another argued the requirement was overreaching.[53] NTIA did not receive any comments on the second PRA issue, *i.e.*, the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used.

NTIA received seven comments on ways to enhance quality, utility, and clarity of the information collected. One commenter agreed that NTIA should conduct audits to minimize fraud and abuse. Another commenter was concerned whether audits would account for converter boxes that were no longer at the facility due to residents moving or passing away.[54] Other commenters argued that NTIA should modify the application to include: a question regarding the type of living arrangements in which the individual resides; a signature line for the nursing home administrator; and a line to fill in the name of the facility.[55] One commenter argued that NTIA could verify information regarding eligible facilities by utilizing the OSCAR database, state licensing and certification agencies, accrediting organizations, and trade associations.[56]

On the fourth PRA issue, ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, NTIA received twenty-one comments. Commenters agreed with NTIA that the application should be modified. However, several commenters argued that requiring the SSN and date of birth from the applicant or the person acting on behalf of the resident were unnecessarily complicated,[57] burdensome,[58] time-consuming,[59] and ''places a substantially higher burden of proof for identifying and confirming the eligibility of long-term care residents and those individuals applying on behalf of seniors than for the general populations.''[60]

Some commenters argued that NTIA should submit applications to nursing home administrators who would verify residency and coupon eligibility.[61] Two commenters argued that NTIA should allow third parties to submit electronic batch applications on behalf of nursing home residents.[62] On the other hand, some commenters argued that requiring administrators to collect and verify the eligibility of applicants was excessive[63] and would unduly burden administrators.[64]

Several commenters argued that NTIA should utilize online databases and other resources to verify the applicant's eligibility.[65] One commenter argued that the onus is on NTIA to verify eligibility and should not be the obligation of the applicant to prove his or her qualifications.[66]

Post Office Boxes

On the first PRA question, whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, commenters were divided on this issue. Some commenters agreed with NTIA's proposed rule requiring proof of the physical address.[67] One commenter argued that the proposed rule is unfair and discouraging.[68]

NTIA did not receive comments on the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used. On the third PRA question, ways to enhance quality, utility, and clarity of the information collected, one commenter argued that NTIA should cross-reference the post office box number with one physical address to prevent duplication.[69]

On the fourth PRA question, ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, some commenters endorsed NTIA's proposed rule and agreed that the requirement is not burdensome or erroneous.[70]

The comments to the NPRM and the analysis of the NPRM have resulted in changes or modifications from the proposed rule to the final rule. Accordingly, NTIA has modified certain aspects of the information collection and recordkeeping requirements. These modifications are discussed below:

1.) *Title*: Waiver Application for the Digital-to-Analog Converter Box Coupon

Type of Request: New Collection

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per respondent.

Respondents: Individuals residing in nursing homes, intermediate care facilities, and assisted living facilities or other individuals submitting this information on behalf of those residents

Estimated Number of Respondents: 420,000

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 20 minutes

In the NPRM, NTIA proposed to request residents of nursing homes to submit his or her name, date of birth, and SSN, the name of the nursing home and a certification from the resident as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service. The NPRM also proposed that persons designated to act on nursing home resident's behalf be required to provide all of the information required with respect to the resident, *as well as* his or her own name, address, SSN, date of birth, and evidence that he or she is empowered to act on behalf of the resident (*e.g.* power of attorney or birth certificate indicating familial relationship). Finally, the NPRM proposed that Administrators of nursing facilities be required to provide all of the information required with respect to the resident as well as the administrator's own name, SSN, date of birth and a copy of each facility's operating license indicating the administrator's authorization to administer the nursing facility.

As discussed in the preamble, the overwhelming number of commenters opposed the collection of a nursing home resident's SSN and date of birth. Likewise, commenters opposed the collection of personal information from persons designated to act on behalf of the residents and nursing home administrators. As a result of the comments, NTIA will only seek

[53] ACTS Comments at 1; AHCA/NCAL at 3.

[54] The Good Samaritan Comments at 1.

[55] AHCA/NCAL at 2; Texas Ombudsman Comments at 2; Ohio Ombudsman Comments at 2.

[56] NCCNHR Comments at 2.

[57] MACC Comments at 2.

[58] AHCA/NCAL Comments at 3.

[59] AARP Comments at 6.

[60] NCCNHR Comments at 2.

[61] Tiffany Smith Comments at 1; Buttonwood Hospital of Burlington County (Buttonwood) Comments at 1; Kathleen Cianci Comments at 1.

[62] Bridget Samuels Comments at 1-2.; The City of Seattle Comments at 2.

[63] Stephen Eggles Comments at 1.

[64] NCCNHR Comments at 2; ACTS Comments at 1.

[65] Texas Ombudsman Comments at 1; Ohio Ombudsman Comments at 1; AHCA Comments at 2-3; NCCNHR Comments at 2; AHAP at 6.

[66] AARP Comments at 6.

[67] NY Consumer Protection Board Comments at 3; National Association of Broadcasters Comments at 2-3; Puerto Rico Telecommunications Regulatory Board Comments at 4.

[68] Andrew Juchonowski Comments at 1; NATOA Comments at 5-6.

[69] Andrew Juchonowski Comments at 1.

[70] NY CPB Comments at 3; NAB Comments at 2-3; Puerto Rico Comments at 4.

information from the resident. The only information that will be required is the name, address of the facility, and a certification as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service.

2.) *Title*: Applications for Households that Utilize Post Office Boxes for Mail Receipt

Type of Request: New Collection

In the NPRM, NTIA proposed to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons if it could provide proof of physical residence. Specifically, NTIA proposed that an applicant that utilizes a post office box for mail receipt provide a copy of one or more of such documents as a valid driver's license containing the applicant's physical address; a utility bill (water, gas, electric, oil, cable, or landline telephone (*i.e.*, not wireless or pager)) bearing the applicant's name and physical address and issued within the sixty (60) days immediately preceding the date the coupon application is submitted or a government-issued property tax bill for the applicant's residence. As a result of comments received in the proceeding, NTIA decided not to impose this requirement on households that utilize Post Office boxes for mail receipt, but to permit these households to provide the same information that similarly situated applicants currently use.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866; and therefore, has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Analysis was completed, outlining the costs and benefits of implementing this program. The complete analysis is available from NTIA upon request.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. NTIA has determined that the rule meets the applicable standards provided in section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

Congressional Review Act

This rule has been determined to be not major under the Congressional Review Act, 5 U.S.C. § § 801 *et seq.*

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) was prepared and published in the NPRM. A copy of the IRFA was provided to the Chief Counsel for Advocacy of the Small Business Administration. Although NTIA specifically sought comment on the costs to small entities of complying with the Final Rule, no comments provided specific cost information. NTIA has carefully considered whether to certify that the Final Rule will not have a significant impact on a substantial number of small entities. NTIA continues to believe the Final Rule's impact will not be substantial in the case of small entities. However, NTIA cannot quantify the impact the Final Rule will have on such entities. Therefore, in the interest of thoroughness, NTIA has prepared the following Final Regulatory Flexibility Analysis (RFA) with this Final Rule in Accordance with the Regulatory Flexibility Act.[71]

1. *Succinct Statement of the Need for, and Objectives of the Rule*:

NTIA is issuing this Final Rule so that residents of nursing home facilities may apply for and receive a $40 coupon towards the purchase of a digital-to-analog converter box. Under current NTIA regulations, only U.S. households are eligible to receive coupons. Therefore, current regulations do not extend eligibility to residents of nursing home facilities. This rule allows seniors that reside in nursing home facilities and rely on free, over-the-air television, to apply for and receive coupons to purchase digital-to-analog converter boxes. The rule also permits an otherwise eligible household that utilizes a post office box for mail receipt to apply for and receive coupons.

2. *Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA: Summary of the Assessment of the Agency of Such Issues; and Statement of Changes Made in the Rule as a Result of Such Comments*:

There were no comments raised in response to the IRFA.

3. *Description and Estimate of the Number of Small Entities to Which the Rule will Apply Or an Explanation of Why no Such Estimate is Available*:

The RFA requires agencies to provide a description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.[72] Under the RFA, the term ''small entity'' has the same meaning as the terms ''small business,'' ''small organization'' and ''small governmental jurisdiction.''[73] To the extent that this rule affects small businesses, it would affect nursing home facilities that are deemed to be small businesses. According to the Small Business Administration (SBA), Nursing Care Facilities and Continuing Care Retirement Communities must have receipts of $12.5 million or less in order to qualify as a small business concern.[74] SBA provided, however, that Homes for the Elderly and Other Residential Care Facilities must have receipts of $6.5 million or less to qualify as a small business concern.[75] NTIA does not have data on the number of these facilities that would qualify as a small business concern. NTIA also does not have data on the number of residents of these small businesses that would take advantage of the Coupon Program.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

There are no projected reporting, recordkeeping or other compliance requirements associated with this rule.

E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The rule has no significant economic impact on small entities. Participation in the program is voluntary, thus any economic impact would not be caused by the rule as small entities are not required to participate in the program. NTIA notes that many nursing home facilities, small or otherwise, may not participate in the program because residents may already receive television service through one of the multichannel video programming distributors, such as cable or satellite service. To the extent that small entities participate in the program, the impacts are estimated to be small. Long term care facilities are only impacted by this program to the extent that an administrator may choose to apply for a coupon on behalf of a resident. NTIA estimates that it would take approximately 20 minutes to submit this application on the resident's behalf. There is no indication that this time commitment would result in significant economic impact to a nursing home facility.

In any case, as a result of the comments received in this proceeding and the decisions made based on those comments, the actual burden on nursing home facilities has actually been reduced. In the NPRM, NTIA proposed to require administrators of nursing home facilities to provide the administrator's own name, SSN, and

[71] 5 U.S.C. § 604.

[72] 5 U.S.C. § 604(a)(3).

[73] 5 U.S.C. § 601.

[74] 13 CFR § 121.201.

[75] 13 CFR § 121.201.

date of birth. Under the proposed rule, the administrator would also have to provide a copy of the facility's operating license indicating the administrator's authorization to administer the nursing home. As a result of the comments submitted in this proceeding, NTIA is only requesting that an administrator submitting an application on behalf of the resident to submit the same information that the resident would submit. In other words, the administrator would only have to submit the information that pertains to the resident requesting a coupon. This action has resulted in a reduced burden in terms of time and money for those administrators of facilities that happen to be small entities.

Executive Order 12372

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

Unfunded Mandates

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

National Environmental Policy Act

It has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. § § 4321 *et seq.*) (NEPA), an Environmental Impact Statement is not required.

Government Paperwork Elimination Act

NTIA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide to the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12630

This rule does not contain policies that have takings implications.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of Federalism Impact Statement.

Regulatory Text

List of Subjects in 47 CFR Part 301

■ For the reasons set forth in the preamble, NTIA amends title 47, Part 301 as follows:

PART 301—DIGITAL-TO-ANALOG CONVERTER BOX COUPON PROGRAM

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

Authority: Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4, 21 (Feb. 8, 2005).

■ 2. Paragraph 301.2 is amended by adding new definitions in alphabetical order to read as follows:

§ 301.2 Definitions.

* * * * *

Assisted living facility means a public facility, proprietary facility, or facility of a private nonprofit corporation that: is licensed by the State and makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

* * * * *

Intermediate care facility means a proprietary facility or facility of a private nonprofit corporation or association licensed by the State for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

Nursing Home means a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed by the State for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

Nursing Home Resident means an individual who lives on a permanent basis at a Nursing Home, Intermediate Care Facility, or Assisted Living Facility. A Nursing Home Resident does not have a permanent address that is separate from the Nursing Home, Intermediate Care Facility, or the Assisted Living Facility.

* * * * *

■ 3. Section 301.3 is amended by revising paragraph (a)(2) to read as follows:

§ 301.3 Household eligibility and application process.

(a)* * *

(2) A Post Office Box will not be considered a valid mailing address unless the applicant supplies information to identify the physical location of the household, as required.

* * * * *

■ 4. Section 301.7 is added to read as follows:

§ 301.7 Waiver of Household Eligibility

(a) A resident of a Nursing Home, Intermediate Care Facility or Assisted Living Facility may apply for a limited waiver of the household eligibility requirement for the Coupon Program and be eligible for one coupon. Anyone may apply for a coupon on behalf of the Resident including the Resident, a family member, an employee of the Nursing Home, Intermediate Care Facility or Assisted Living Facility.

(b) The application must be in the name of the Nursing Home Resident and must include the resident's name, the name of the facility and the street address. The Nursing Home Resident must also certify that their television set is over-the-air-reliant or whether they subscribe to satellite, cable or other pay television service.

(c) Applications will be accepted by mail only on pre-printed form. In the alternative, a letter will be accepted as an application if all of the required information for the waiver is contained therein.

(d) A Nursing Home Resident seeking a waiver is entitled to only one coupon.

(e) Coupons for approved applications will be mailed individually to each Nursing Home Resident, addressed and mailed ''in care of'' to the Nursing Home Resident at the address of the Nursing Home, Intermediate Care Facility, or Assisted Living Facility.

Dated: September 15, 2008.

Meredith Attwell Baker,

Acting Assistant Secretary for Communications and Information.

[FR Doc. E8–21892 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–60–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 516, 532, 538, 546, and 552

[GSAR Amendment 2008–02; GSAR Case 2008–G517; (Change 23); Docket 2008–0007; Sequence 01]

RIN 3090–AI68

General Services Administration Acquisition Regulation; GSAR Case 2008–G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Pub.L. 110–248, The Local Preparedness Acquisition Act. The Act authorizes the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

DATES: *Effective Date:* September 19, 2008.

Applicability Date: This amendment applies to solicitations and existing contracts for Schedule 84, as defined in GSAM 538.7001, Definitions, Schedule 84. Further, this amendment applies to contracts awarded after the effective date of this rule for Schedule 84. Existing Schedule 84 contracts shall be modified by mutual agreement of both parties.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 18, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR case 2008–G517, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''GSAR case 2008–G517'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR case 2008–G517. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR case 2008–G517'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR case 2008–G517, 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. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. Please cite GSAR case 2008–G517. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends GSAM Parts 511, 516, 532, 538, 546, and 552 to implement Pub.L. 110–248, The Local Preparedness Acquisition Act. The public law amends the ''Cooperative Purchasing'' provisions of the Federal Property and Administrative Services Act where the Administrator of GSA provides States and localities access to certain items offered through GSA's supply schedules. The Public Law amends 40 U.S.C. 502(c) that allows, to the extent authorized by the Administrator, a State or local government to use Federal Supply Schedules of the General Services Administration to purchase alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

The GSA Schedules Program is also known as the Federal Supply Schedule (FSS) or Multiple Award Schedules (MAS) Program. Under the FSS/MAS Program, Federal agencies are able to purchase goods and services under contracts that are pre-negotiated by GSA. These contracts cover more than 11 million commercial goods and services and are listed in broad categories known as Schedules. Under current law, State and local governments are authorized to purchase goods and services off the GSA Schedules, in limited circumstances, under special procurement authority. This interim rule allows for State and local purchasing under GSA Schedule 84, which covers products and services related to law enforcement and security. Schedule 84 includes items such as fire alarm systems, door entry control devices, intrusion detection sensors, bomb detection equipment, perimeter security and video surveillance systems. Use of the GSA Schedules allows State and local governments to reduce time and resources spent on negotiating and awarding contracts for needed goods and services and gives them access to the pre-negotiated prices on the Federal Supply Schedules. Access to Schedule 84 will help State and local governments meet growing homeland security and public safety needs.

Cooperative Purchasing was added to the GSAR in 2003, covering automated data processing equipment (including firmware, software, supplies, support equipment, and services) (Schedule 70). A proposed rule was published in the **Federal Register** at 68 FR 3220, January 23, 2003; an interim rule was published in the **Federal Register** at 68 FR 24372, May 7, 2003; and a final rule was published in the **Federal Register** at 69 FR 28063, May 18, 2004. The rule authorized State and local governments to procure IT products and services from Schedule 70, Information Technology and the Consolidated Schedule, contracts containing the IT Special Item Numbers (SINs).

A related interim rule on Recovery Purchasing was published in the **Federal Register** at 72 FR 4649, February 1, 2007. That interim rule implemented Section 833 of P.L. 109–364, which authorized the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster, terrorism, or

nuclear, biological, chemical, or radiological attack. State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. This Recovery Purchasing authority was limited to GSA and the Department of Veterans Affairs (VA) Federal Supply Schedule contracts and does not include any other GSA programs.

Additional information about Cooperative Purchasing and on Recovery Purchasing is available in GSA's Schedules e-Library at *http://www.gsaelibrary.gsa.gov*.

Schedule 84 Special Item Numbers

Alarm and Signal Systems, Facility Management Systems, Professional Security/Facility Management Services and Protective Service Occupations (Guard Services).

SIN 246 20 1 - Miscellaneous Alarm and Signal Systems. Process Monitoring/Fault Reporting Devices or Systems.

SIN 246 20 2—Miscellaneous Alarm and Signal System Hazard Indicating alarm Devices or Systems for the Detection of Toxic Gases, Flammable Gases.

SIN 246 20 3 - Miscellaneous Alarm and Signal Systems. Audible/Visual Warning/Signaling Devices.

SIN 246 20 4 - Miscellaneous Alarm and Signal Systems. Warning System Devices (Patient/Detainees).

SIN 246 23 - Anti-Theft Material Alarm Control Systems for Detection of Property.

SIN 246 25 - Fire Alarm Systems.

SIN 246 35 1 - Access Control Systems, Door entry control by card access, magnetic proximity.

SIN 246 35 2 - Access Control Systems, Door entry control by touch access, dial, digital, keyboard, keypad.

SIN 246 35 3 - Access Control Systems, Parking Access Control.

SIN 246 35 4 - Access Control Systems, Emergency exit door access/alarm systems for security and/or fire safety.

SIN 246 35 5 - Access Control Systems - Vehicle Arrest/Security Barrier/Barricade/Bollard Systems, Decorative Barrier Planters.

SIN 246 35 6 - Other Access Control Systems.

SIN 246 36 - Locking Devices.

SIN 246 40 - Intrusion Alarms and Signal Systems.

SIN 246 42 1 - Facility Management Systems (Including Accessories and Repair Parts. Computerized Systems for Surveillance, Monitoring, Controlling, Signaling and Reporting Multiple Functions. Security Functions (*i.e.*, access control, fire detection, intrusion, etc.).

SIN 246 42 2 - Facility Management Systems (Including Accessories and Repair Parts. Computerized Systems for Surveillance, Monitoring, Controlling, Signaling and Reporting Multiple Functions. Energy and Facility Management Functions and Services, Building Automation Control systems (including lighting, HVAC controls and sensors), Building Comfort Systems (including heating, ventilation and air conditioning, chillers).

SIN 246 42 3 - Facility Management Systems - including accessories and repair parts. - Computerized systems for surveillance, monitoring, controlling, signaling and reporting multiple functions. Systems capable of both security functions and energy management functions.

SIN 246 43 - Perimeter Security/Detection Systems.

SIN 246 50 - Ancillary Services relating to Security/Facility Management Systems.

SIN 246 51 - Installation of Security/Facility Management Systems Requiring Construction.

SIN 246 52 - Professional Security/Facility Management Services.

SIN 246 53 - Facility Management and Energy Solutions.

SIN 246 54 - Protective Service Occupations.

SIN 246 60 1—Security Systems Integration and Design Services.

SIN 246 60 2—Security Management Support Services.

SIN 246 60 3—Security System Life Cycle Support.

SIN 246 60 4—Total Solution Support Products.

SIN 246 99 - Introduction of New Products/Services relating to Alarm and Signal Systems/Facility

Firefighting and Rescue Equipment, Urban and Wildland.

SIN 465 8—Flood Control Equipment—Traditional and Alternative Approaches.

SIN 465 9—Medical/Rescue Kits.

SIN 465 10 - Emergency Patient Transportation and Immobilization Devices.

SIN 465 11 - Fire Extinguishing/Suppressing Products, Retardant, Foams and Equipment.

SIN 465 17 - Firefighting Distress/Signal Devices and Heat Sensing Devices.

SIN 465 19 - Firefighting and Rescue Tools, Equipment and Accessories.

SIN 465 22 - Breathing Air Equipment, Inhalator Devices, Respiratory Protection Products, Related Support Items and Solutions.

SIN 567 15 - Hoses, Valves, Fittings, Nozzles, Couplings and Related Accessories.

SIN 567 4 - Helicopter Equipment and Products for Search and Rescue and Firefighting Applications.

SIN 567 8 - Burning Equipment.

SIN 567 99 - Introduction of New Products and Services relating to Firefighting and Rescue Equipment.

Law Enforcement and Security Equipment Supplies and Services.

SIN 426 1A - Miscellaneous Personal Equipment.

SIN 426 1B - Body Armor.

SIN 426 1C—Helmets.

SIN 426 1D - Restraining Equipment.

SIN 426 1G - Miscellaneous Non-Personal Law Enforcement Equipment.

SIN 426 2A - Canine Training and Handling Equipment, Canine Search and Detection.

SIN 426 3A - Emergency Signal Systems.

SIN 426 3B - In-Vehicle Protection and Restraint Systems.

SIN 426 4C - Night Vision Equipment.

SIN 426 4D - Alcohol Detection Kits and Devices.

SIN 426 4E - Bomb Disposal and Hazardous Material Protective and Detective Equipment.

SIN 426 4F - Emergency Preparedness and First Responder Equipment, Training and Services.

SIN 426 4G - Firearms Storage, Securing and Cleaning Equipment; Unloading Stations; Bullet Recovery Systems and Gun Racks.

SIN 426 4J - Target Systems/Target Range Accessories.

SIN 426 4K - Fingerprinting/Palmprinting (Taking and Detection) and Evidential Casting Materials.

SIN 426 4L - Fingerprinting/Palmprinting (Taking and Detection) and Evidential Casting Materials.

SIN 426 4M - Drug Testing Equipment and Kits.

SIN 426 4N - Criminal Investigative Equipment and Supplies.

SIN 426 4Q - Vehicle Monitor (Tracking) Systems.

SIN 426 4S - Surveillance Systems.

SIN 426 5A - Aircraft Armoring and Ancillary Services.

SIN 426 5B—Armored Vehicles, Vehicle Armoring Services, Wheeled Vehicles.

SIN 426 6—Law Enforcement and Security Training.

SIN 426 7—Professional Law Enforcement Services.

SIN 426 99 - Introduction of New Services/Products related to Law Enforcement and Security Equipment.

Marine Craft and Equipment.

SIN 260 01 - Boats, Powered.

SIN 260 03 - Boats, Nonpowered.

SIN 260 06 - Boats, Inflatable, Powered and Nonpowered.

SIN 260 09 - Inboard and Outboard Engines, Marine Diesel Propulsion Engines (Ranging in Horsepower from 150–4,000).

SIN 260 10—Marine Craft Electronics.

SIN 260 11—Marine Craft Trailers and Trailer Accessories/Spare Parts.

SIN 260 12 - Floating Marine Barriers and Booms, Floats, Perimeter Floats, and Moorings.

SIN 260 13—Marine Craft Modifications, Marine Craft Repair and Marine Craft Spare Parts.

SIN 260 14—Harbor/Waterfront Security Products and Services and Professional Marine Security Services.

SIN 260 98 - Ancillary Services Relating to Marine Craft Systems.

SIN 260 99 - Introduction of New Products and Services Items Directly Related to Marine Equipment.

Special Purpose Clothing.

SIN 633 1 - Gloves Industrial, Work and Cold Weather Gloves.

SIN 633 15 - Rainwear. Lightweight Rainwear.

SIN 633 16 - Footwear. Men's Over-the-Sock Boots (Work, Uniform, Sport) and Women's Over-the-Sock Boots (Work, Uniform, Sport).

SIN 633 18 - Footwear. Men's or Women's Overshoes, Rubber.

SIN 633 19 - Footwear. Men's Safety Toe Shoes or Boots and Women's Safety Toe Shoes or Boots.

SIN 633 21A - Shipboard/Aircraft Anti-Exposure Immersion Clothing Not Otherwise Covered.

SIN 633 22 - Extreme Cold Weather Clothing. Coats, Jackets, Vests, Hoods and Hats.

SIN 633 23 - Extreme Cold Weather Clothing. Overalls, Coveralls, Pants, Insulated.

SIN 633 25 - Footwear. Boots, Insulated, Waterproof, Extreme Cold Weather.

SIN 633 26 - Special Purpose Work clothes. Disposable Clothing.

SIN 633 27 - Special Purpose Work clothes. Coveralls, General Purpose, Detainee Clothing.

SIN 633 30 - Structural Fire Fighting Clothing. Coat, Turnout, Proximity; Trousers, Proximity; Helmets, Proximity.

SIN 633 30A - Structural Fire Fighting Clothing. Coat, Turnout, Proximity; Trousers, Proximity; Helmets, Proximity.

SIN 633 32 - Structural Fire Fighting Clothing. Boots, Bunker and Hip.

SIN 633 33 - Structural Fire Fighting Clothing. Gloves.

SIN 633 35 - Structural Fire Fighting Clothing. Protective Hoods.

SIN 633 37 - Structural Fire Fighting Clothing. Fire Fighter's Station Wear.

SIN 633 38 - Wildland Fire Fighting Clothing - Personal Protection. Shirts and Pants (BDU's) NFPA 1977 Compliant.

SIN 633 39 - Wildland Fire Fighting Clothing - Personal Protection. Brush Shirts, Pants, Coats, Jackets, Jumpsuits - NFPA 1977 Compliant. Shirts, Pants, coats, Jumpsuits, coveralls - Flame Resistant. Not NFPA Compliant.

SIN 633 4 - Protective Worksuits, Waterproof, Chemical and Electrical Safety. Jackets, Coats and Hoods.

SIN 633 40 - Flotation Devices. Personal Flotation Devices, Coast Guard Approved Under 46 CFR 160.064; and Personal Flotation Devices Not Coast Guard Approved.

SIN 633 43 - Wildland Fire Fighting Clothing - Personal Protection. Helmets, Safety, Wildfire - NFPA 1977 Compliant.

SIN 633 45 - Wildland Fire Fighting Clothing - Personal Protection. Helmets, Safety, Electrical Construction (Welder's).

SIN 633 47 - Security Wear, EMS Clothing and Related Products.

SIN 633 48 - High Visibility, Reflective Safety Products.

SIN 633 49 - Medical/Hospital Clothing.

SIN 633 50 - Industrial Work Shirts and Pants.

SIN 633 51—Concealment Clothing, Camouflage Clothing and BDUs.

SIN 633 52—Miscellaneous Footwear Accessories.

SIN 633 6 - Protective Worksuits, Waterproof, Chemical and Electrical Safety.

SIN 633 6A - Emergency Response/ Hazmat Clothing and Related Products.

SIN 633 60—Miscellaneous Undergarments for use with Special Purpose Clothing.

SIN 633 61—Special Purpose Clothing not elsewhere covered under this Schedule.

SIN 633 70—Cool/Hot Products.

SIN 633 99 - Introduction of New Products/Services relating to Special Purpose Clothing.

Cooperative Purchasing Data.

GSA seeks to continually improve the quality of its data on cooperative purchasing activity under the FSS/MAS Program. Enhanced information on the buying trends of non-federal purchases will help GSA and other Federal agencies better understand how states and localities are using the FSS/MAS Program to facilitate key objectives of cooperative purchasing. One such objective is greater interoperability between Federal, state, and local infrastructures to achieve improved preparedness for emergencies. More detailed data will also allow GSA to more effectively monitor the impact of cooperative purchasing, including changes, if any, in: (i) small business participation; (ii) access for federal customers; and (iii) GSA's ability to negotiate favorable pricing and terms and conditions. Currently, GSA collects sales data through both quarterly vendor reports based on the Industrial Funding Fee report and GSA Advantage, GSA'S online purchasing tool. GSA welcomes public comment on expanding the use and/or functionality of GSA Advantage or another system or process that allows additional collection of information at the transaction level to provide additional insight regarding the impact of the Cooperative Purchasing Program.

This is not a significant regulatory action and, therefore, was not subject to 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.

B. Regulatory Flexibility Act

The changes 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 the interim rule will affect large and small entities including small businesses that are awarded Schedule 84 contracts, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 84 contracts. The analysis is as follows:

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

1. Description of the reasons why action by the agency is being considered.

To implement Pub.L. 110–248, The Local Preparedness Acquisition Act. The Act amends section 502 of Title 40, United States Code, to authorize the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group). The rule opens the Federal Supply Schedule 84 for use by other governmental entities to enhance intergovernmental cooperation.

2. Succinct statement of the objectives of, and legal basis for the interim rule.

The interim rule will implement Pub.L. 110–248, The Local Preparedness

Acquisition Act with the objective of opening the Federal Supply Schedule 84 for use by other governmental entities to enhance intergovernmental cooperation. The goal of the new rule is to make ''government'' (considering all levels) more efficient by reducing duplication of effort and utilizing volume purchasing techniques for the acquisition of law enforcement, security, and certain other related items.

3. Description of, and where feasible, estimate of the number of small entities to which the interim rule will apply.

The rule will affect large and small entities including small businesses, that are awarded Schedule 84 contracts, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 84. In Fiscal Year 2007, approximately 85 percent (1,061) of GSA Schedule 84 contractors were small businesses, and approximately 54 percent ($1,206,816,656) of Schedule 84 contract sales were reported as small business. All of the small business Schedule 84 contractors will be allowed, at the Schedule contractor's option, to accept orders from State and local governments. Obviously, the expanded authority to order from Schedule 84 could increase the sales of small business Schedule contractors. As an example, the Schedule 70 Cooper- ative Purchasing contract sales reported by small businesses between Fiscal Year 2004 and Fiscal Year 2007 increased from approximately $33.1 million to $98.3 million. This represented an average of 42 percent of the total Schedule 70 Cooperative Purchasing contract sales.

It is difficult to identify the number of non-schedule small businesses that currently sell directly to State and local governments. The ability of governmental entities to use Schedule 84 may affect the competitive marketplace in which those small businesses operate. State and local government agencies could realize lower prices on some products and services, less administrative burden and shortened procurement lead times. The rule does not affect or waive State or local government preference programs. Finally, small governmental jurisdictions will also be affected. Counties, incorporated municipalities, minor subdivisions, public housing authorities, school districts, public educational institutions of higher learning, and Indian tribal governments would be among those affected if they chose to order from Schedule 84 contracts. Federal Supply Schedule contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small governmental entities to order from Schedule 84 holds out the potential for significant cost savings for those organizations.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The interim rule makes changes in certain provisions or clauses in order to recognize the fact that authorized non-federal ordering activities may place orders under the contract. The Office of Management and Budget under the Paperwork Reduction Act has previously approved these clauses and the changes do not impact the information collection or recordkeeping requirements.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the rule.

The interim rule does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the interim rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objective of this rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 511, 516, 532, 538, 546, and 552 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.* (GSAR case 2008–G517), in all correspondence.

C. 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 3090–0250.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services (GSA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Pub.L. 110–248, The Local Preparedness Acquisition Act. The Act was signed and became effective June 26, 2008. In addition, this interim rule will provide immediate access to Schedule 84 items (e.g., firefighting and rescue equipment, first responder gear and kits, law enforcement and security equipment) that may be critical to meet the public safety and homeland security needs of State and local governments during hurricanes, fires and incidents related to homeland security. Further, implementation of this interim rule is an incremental expansion of the Cooperative Purchasing Program where the processes and procedures are well established and have been the subject of prior rulemakings. 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 511, 516, 532, 538, 546, and 552.

Government procurement.

Dated: September 15, 2008.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 511, 516, 532, 538, 546, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511, 516, 532, 538, 546, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 511—DESCRIBING AGENCY NEEDS

■ 2. Amend section 511.204 by revising paragraphs (c)(3) and (d) to read as follows:

511.204 Solicitation provisions and contract clauses.

* * * * *

(c) * * *

(3) Include the clause at 552.211–75, Preservation, Packaging and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. You may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. Use Alternate I in solicitations and contracts for—

(i) Federal Supply Schedule 70;

(ii) The Consolidated Schedule containing information technology Special Item Numbers;

(iii) Federal Supply Schedule 84; and

(iv) Federal Supply Schedules for recovery purchasing (see 538.7102).

* * * * *

(d) *Supply contracts.* Include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for—

(1) Federal Supply Schedule 70;

(2) The Consolidated Schedule containing information technology Special Item Numbers;

(3) Federal Supply Schedule 84; and

(4) Federal Supply Schedules for recovery purchasing (see 538.7102).

PART 516—TYPES OF CONTRACTS

■ 3. Amend section 516.506 by revising paragraph (c) to read as follows:

516.506 Solicitation provisions and contract clauses.

* * * * *

(c) Use 552.216–72, Placement of Orders, Alternate III, instead of Alternate II in solicitations and contracts for—

(1) Federal Supply Schedule 70;

(2) The Consolidated Schedule containing information technology Special Item Numbers; and

(3) Federal Supply Schedule 84.

* * * * *

PART 532—CONTRACT FINANCING

■ 4. Amend section 532.206 by revising paragraphs (a) and (b) to read as follows:

532.206 Solicitation provisions and contract clauses.

(a) *Discounts for prompt payment.* Include 552.232–8, Discounts for Prompt Payments, in multiple award schedule solicitations and contracts instead of the clause at Federal Acquisition Regulation 52.232–8. Use Alternate I in solicitations and contracts for—

(1) Federal Supply Schedule 70;

(2) The Consolidated Schedule containing information technology Special Item Numbers (SINs); or

(3) Federal Supply Schedule 84; and

(4) Federal Supply Schedules for recovery purchasing (see 538.7102).

(b) The contracting officer shall insert the clause at 552.232–81, Payments by Non-Federal Ordering Activities, in solicitations and schedule contracts for—

(1) Federal Supply Schedule 70;

(2) The Consolidated Schedule contracts containing information technology SINs;

(3) FSS Schedule 84; and

(4) Federal Supply Schedules for recovery purchasing (see 538.7102).

* * * * *

■ 5. Amend section 532.7003 by revising paragraphs (b) and (c) to read as follows:

532.7003 Contract clause.

* * * * *

(b) *Federal Supply Service contracts.* Use Alternate I of the clause at 552.232–77 for all Federal Supply Schedule solicitations and contracts, except for—

(1) Federal Supply Schedule 70, Information Technology;

(2) The Consolidated Schedule contracts containing information technology Special Item Numbers;

(3) Federal Supply Schedule 84; and

(4) Federal Supply Schedule contracts for recovery purchasing (see 538.7102).

(c) Use 552.232–79 instead of 552.232–77 in solicitations and contracts for—

(1) Federal Supply Schedule 70;

(2) The Consolidated Schedule containing information technology Special Item Numbers;

(3) Federal Supply Schedule 84; and

(4) Federal Supply Schedule contracts for recovery purchasing (see 538.7102).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 6. Amend section 538.273 by revising paragraphs (a)(2) and (b)(2) to read as follows:

538.273 Contract clauses.

(a) * * *

(2) 552.238–71, Submission and Distribution of Authorized FSS Schedule Pricelists.

(i) Use Alternate I, in solicitations and contracts for—

(A) Federal Supply Schedule 70;

(B) The Consolidated Schedule contracts containing information technology Special Item Numbers;

(C) Federal Supply Schedule 84; and

(D) Federal Supply Schedules for recovery purchasing (see 538.7102), use Alternate I.

(ii) If GSA is not prepared to accept electronic submissions for a particular schedule delete—

(A) The paragraph identifier ''(i)'' in (b)(1) and the word ''and'' at the end of paragraph (b)(1)(i); and

(B) Paragraphs (b)(1)(ii) and (b)(3).

* * * * *

(b) * * *

(2) *552.238–75, Price Reductions.* Use Alternate I in solicitations and contracts for—

(i) Federal Supply Schedule 70;

(ii) The Consolidated Schedule containing information technology Special Item Numbers;

(iii) Federal Supply Schedule 84; and

(iv) Federal Supply Schedules for recovery purchasing (see 538.7102).

■ 7. Revise section 538.7000 to read as follows:

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use—

(a) Federal Supply Schedule 70;

(b) The Consolidated Schedule contracts containing information technology Special Item Numbers (SINs); and

(c) Federal Supply Schedule 84.

■ 8. Amend section 538.7001 by adding, in alphabetical order, the definition ''Schedule 84'' to read as follows:

538.7001 Definitions.

* * * * *

Schedule 84 means the Federal Supply Schedule for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal Supply Classification Code Group 84 or any amended or subsequent version of that Federal supply classification group).

* * * * *

■ 9. Amend section 538.7002 by redesignating paragraph (c) as paragraph (d); by adding a new paragraph (c); and by revising the newly designated paragraph (d) to read as follows:

538.7002 General.

* * * * *

(c) Pub.L. 110–248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

(d) State and local governments are authorized to procure from Schedule 70 contracts, Consolidated Schedule contracts containing information technology SINs, and Schedule 84 contracts. A listing of the participating contractors and SINs for the products and services that are available through Schedule 70 contracts, the Consolidated Schedule contracts containing information technology SINs, and Schedule 84 contracts, is available in GSA's Schedules e-Library at *www.gsa.gov/elibrary*. Click on Schedules e-Library, and under Cooperative Purchasing, click on ''View authorized vendors.'' The contractors and the products and services available for Cooperative Purchasing will be labeled with the Cooperative Purchasing icon.

■ 10. Amend section 538.7003 by revising the introductory paragraph to read as follows:

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70, the Consolidated Schedule containing information technology SINs, and Schedule 84, for use by eligible non-federal entities, the contracting

officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete ''Government'' or similar language referring to the U.S. Government and substitute ''ordering activity'' or similar language when preparing solicitations and contracts to be awarded under Schedule 70, and the Consolidated Schedule containing information technology SINs, and Schedule 84. When such changes are made, the word ''(DEVIATION)'' shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

* * * * *

■ 11. Revise section 538.7004 to read as follows:

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules), in solicitations and contracts for—

(1) Schedule 70;

(2) The Consolidated Schedule containing information technology SINs; and

(3) Schedule 84.

(b) The contracting officer shall insert the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for—

(1) Schedule 70; and

(2) The Consolidated Schedule containing information technology SINs; and

(3) Schedule 84.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and contracts for—

(1) Schedule 70;

(2) The Consolidated Schedule containing information technology SINs; and

(3) Schedule 84.

(d) See 552.101–70 for authorized FAR deviations.

PART 546—QUALITY ASSURANCE

■ 12. Amend section 546.710 by revising paragraph (b) to read as follows:

546.710 Contract clauses.

* * * * *

(b) *Multiple award schedules.* Insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and contracts. Use Alternate I in solicitations and contracts for—

(1) Federal Supply Schedule 70;

(2) The Consolidated Schedule containing information technology Special Item Numbers;

(3) Federal Supply Schedule 84; and

(4) Federal Supply Schedules for recovery purchasing (see 538.7102).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 552.238–78 by revising the date of the clause and paragraph (d) to read as follows:

552.238–78 Scope of Contract (Eligible Ordering Activities).

* * * * *

SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (SEP 2008)

* * * * *

(d) The following activities may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities: State and local government, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

* * * * *

(End of clause)

[FR Doc. E8–21927 Filed 9–18–08; 8:45 am]

BILLING CODE 6820–61–S

Proposed Rules

Federal Register
Vol. 73, No. 183
Friday, September 19, 2008

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

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1915

[Docket No. OSHA–S049–2006–0675 (formerly OSHA Docket No. S–049)]

RIN 1218–AB50

General Working Conditions in Shipyard Employment; Notice of Informal Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; notice of informal public hearings.

SUMMARY: OSHA is announcing that the informal public hearing on the proposed rule on general working conditions in shipyard employment in Seattle, WA, will be held at the Renaissance Seattle Hotel.

DATES: OSHA will hold an informal public hearing in Seattle, WA, beginning at 9:30 a.m., October 21–22, 2008. If necessary, the hearing will continue on subsequent days at the same time and location.

ADDRESSES: The hearing will be held at the Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.

Docket: To read or download background documents as well as comments and materials submitted in response to the proposed rule or at the informal public hearing in Washington, DC, go to Docket No. OSHA–S049–2006–0675 at *http://www.regulations.gov*, which is the Federal eRulemaking Portal.

All materials and submissions in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web page. All materials and submissions are available for public inspection and copying at the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC; telephone (202) 693–2350. For information on reading or downloading materials in the docket and obtaining materials not available through the Web page, please contact the OSHA Docket Office during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

Electronic copies of this **Federal Register** notice and the proposed rule are available at *http://www.regulations.gov*. This notice, the proposed rule, news releases, and other relevant information also are available at OSHA's Web page at *http://www.osha.gov*.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Jennifer Ashley, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical information: Joseph Daddura, Director, Office of Maritime within the Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2086.

Hearings: Ms. Veneta Chatmon, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov*.

SUPPLEMENTARY INFORMATION:

OSHA will hold an informal public hearing on the proposed rule on general working conditions in shipyard employment on October 21–22, 2008, at the Renaissance Seattle Hotel, Seattle, WA. If necessary, the hearing will continue on subsequent days at the same time and location.

On December 20, 2007, OSHA published a proposed rule to update and revise the standards on general working conditions in shipyard employment (72 FR 72451). OSHA invited written comments and requests for hearings on the proposed rule. The deadline for submitting comments and hearing requests was March 19, 2008. OSHA received several hearing requests and published a **Federal Register** notice scheduling informal public hearings beginning September 9, 2008, in Washington, DC, and October 21, 2008, in Seattle, WA (73 FR 36823 (6/30/2008)). At that time, OSHA had not finalized the location of the hearing in Seattle, WA, and this notice announces that location.

Persons interested in participating at either hearing were required to file a notice of intention to appear by July 18, 2008, and, to submit advance written testimony by August 8, 2008, if they were requesting to testify for longer than 10 minutes. They do not need to resubmit. OSHA is not accepting additional requests to participate at the hearing in Seattle, WA.

OSHA emphasizes that hearings on proposed rules are open to the public; however, only individuals who have filed a timely notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the administrative law judge presiding at the hearing, an individual who did not file a notice of intention to appear may be allowed to a present brief oral statement not exceeding 10 minutes at the end of the hearing.

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC on this 15th day of September 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–21931 Filed 9–18–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819 and 1852

RIN 2700–AD41

NASA Mentor-Protégé Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA proposes to revise the NASA FAR Supplement (NFS) to update the procedures for NASA's Mentor-Protégé program. The changes will streamline the program; align the mentoring to technical skills; expand the program to include Small Disadvantaged Businesses (SDB), women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges and Universities, minority institutions of higher education, and NASA Small Business Innovation Research (SBIR) Phase II small businesses; and will include award fee incentives.

DATES: Comments should be submitted on or before November 18, 2008 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AD41, via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments may also be submitted to Diane Thompson, NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to *Diane.Thompson@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Diane Thompson, NASA, Office of Procurement, Contract Management Division; (202) 358–0514; *e-mail: Diane.Thompson@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements the NASA Mentor-Protégé Program established under the authority of Title 42, U.S.C., 2473(c)(1). Under the program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. This proposed rule also introduces mentor award fee incentives and explains the calculated subcontracting credit pursuant to FAR 52.219–9, Small Business Subcontracting Plan. This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not 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 participation in the mentor protégé program is voluntary and does not impose an economic impact beyond that addressed in the FAC 2005–14 publication of the FAR final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is applicable because the NFS changes impose information collection requirements in the form of applications and report submissions. The information collection has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* via control number 2007–0078.

List of Subjects in 48 CFR Parts 1819 and 1852

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1819 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1819 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Subpart 1819 is revised to read as follows:

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.
1819.7202 Eligibility.
1819.7203 Mentor approval process.
1819.7204 Protégé selection.
1819.7205 Mentor-protégé agreements.
1819.7206 Agreement contents.
1819.7207 Agreement submission and approval process.
1819.7208 Award Fee Pilot Program.
1819.7209 Credit agreements.
1819.7210 Agreement terminations.
1819.7211 Loss of Eligibility.
1819.7212 Reporting requirements.
1819.7213 Performance reviews.
1819.7214 Measurement of Program success
1819.7215 Solicitation provision and contract clauses.

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) established under the authority of Title 42, U.S.C., 2473(c)(1). The purpose of the Program is to:

(1) Provide incentives to NASA contractors, performing under at least one active approved subcontracting plan negotiated with NASA or another Federal agency, to assist protégés in enhancing their capabilities to satisfy NASA and other contract and subcontract requirements;

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives. Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219–9, Small Business Subcontracting Plan.

1819.7202 Eligibility.

(a) Eligibility of Mentors: To be eligible to participate as a mentor, an entity must be—

(1) A large prime contractor performing under contracts with at least one approved subcontracting plan negotiated with NASA, pursuant to FAR Subpart 19.7, The Small Business Subcontracting Program; and

(2) A contractor eligible for receipt of Government contracts.

(i) An entity may not be approved for participation in the Program as a mentor if, at the time of requesting participation in the program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) Eligibility of Protégés: To be eligible to participate as a protégé, an entity must—

(1) Be classified as a Small Disadvantaged Business (SDB), a women-owned small business, a HUBZone small business, a veteran-owned or service-disabled veteran-owned small business, an historically black college and university, minority institution of higher education, or an active NASA SBIR Phase II company, as defined in FAR Part 2, Definitions of Parts and Terms;

(2) Be eligible for the award of Federal contracts; and

(3) Be a small business according to the Small Business Administration

(SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor if the protégé is representing itself as a women-owned small business, HUBZone small business, or a veteran-owned or service-disabled veteran-owned small business.

1819.7203 Mentor approval process.

(a) An entity seeking to participate as a mentor must apply to the NASA Headquarters Office of Small Business Programs (OSBP), to establish its initial eligibility and approval as a mentor, prior to submission of a mentor-protégé agreement.

(b) The application must provide the following information:

(1) A statement that the entity is currently performing under at least one active approved subcontracting plan negotiated with NASA pursuant to FAR 19.702, The Small Business Subcontracting Program, and that the entity is currently eligible for the award of Government contracts.

(2) A summary of the entity's historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(3) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of all other Federal agency contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of subcontracts that the entity awarded under NASA contracts during the two preceding fiscal years.

(6) The total dollar amount of subcontracts that the entity awarded under all other Federal agency contracts during the two preceding fiscal years.

(7) The total dollar amount and percentage of subcontracts that the entity awarded to all SDB, women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges and Universities, and minority institutions of higher education, under NASA contracts and other Federal agency contracts during the two preceding fiscal years. If the entity is presently required to submit a Summary Subcontracting Report via the Government Electronic Subcontracting Reporting System (eSRS), the application must include copies of the final reports for the two preceding fiscal years.

(8) Information on the entity's ability to provide developmental assistance to its eligible protégés.

(9) Any additional information as requested by NASA OSBP.

(c) In accordance with the Small Business Act, developmental assistance as described in 1819.7205(c) and provided by a mentor to its protégé pursuant to a mentor-protégé agreement may not be a basis for determining affiliation or control (either direct or indirect) between the parties.

(d) Entities that apply for participation and are not approved will be provided the reasons and an opportunity to submit additional information for reconsideration.

(e) Entities approved for participation as a mentor in the NASA program must resubmit a mentor application every six (6) years for review and approval by NASA OSBP.

(f) A template of the mentor application is available at: *http://www.osbp.nasa.gov*.

1819.7204 Protégé selection.

(a) Mentors will be solely responsible for selecting protégés. Mentors are required to identify and select concerns that are defined as either an SDB, women-owned small business, HUBZone small business, veteran-owned or service-disabled veteran-owned small business, Historically Black Colleges and Universities, minority institutions of higher education, or an active NASA SBIR Phase II company.

(b) The selection of protégés by a mentor may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or eligibility of an entity selected to be a protégé, the mentor must refer the protest to the SBA to resolve in accordance with 13 CFR Part 121 (with respect to size) or 13 CFR Part 124 (with respect to disadvantaged status).

(d) A protégé may have only one active NASA mentor-protégé agreement, and may not participate in the NASA Program more than two times as a protégé.

(e) Protégés will be required to submit a protégé application concurrently with the agreement submission. This application will include the following information:

(1) A summary of the entity's historical and recent activities, including annual revenue and number of employees.

(2) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(3) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of subcontracts that the company awarded under NASA contracts during the two preceding fiscal years.

(5) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the two preceding fiscal years.

1819.7205 Mentor-protégé agreements.

(a) The agreements shall be structured after the Mentor completes an assessment of the developmental needs of the protégé and a mutual agreement is reached regarding the developmental assistance to be permitted to address those needs and enhance the protégé's ability to perform successfully under contracts and/or subcontracts.

(b) A mentor shall not require a protégé to enter into a mentor-protégé agreement as a condition for award of a contract by the mentor, including a subcontract under a NASA contract awarded to the mentor.

(c) The mentor-protégé agreement may provide for the mentor to furnish any or all of the following types of developmental assistance:

(1) Assistance by the mentor's personnel in—

(i) General business management, including organizational management, financial management, personnel management, marketing, business development, and overall business planning;

(ii) Engineering, environmental and technical matters; and

(iii) Any other assistance designed to develop the capabilities of the protégé under the developmental program.

(2) Award of subcontracts under NASA contracts or other contracts on a noncompetitive basis.

(3) Advance payments under such subcontracts. The mentor must administer advance payments when first approved by NASA in accordance with FAR Subpart 32.4, Advance Payments for Non-Commercial Items.

(4) Loans.

(5) Investment(s) in the protégé in exchange for an ownership interest in the protégé, not to exceed 10 percent of the total ownership interest. Investments may include, but are not

limited to, cash, stock, and contributions in kind.

(6) Assistance that the mentor obtains for the protégé from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black Colleges and Universities.

(iv) Minority institutions of higher education.

(d) Developmental assistance provided under an approved mentor-protégé agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for credit under the Program.

(e) A template of the mentor-protégé agreement is available at *http://www.osbp.nasa.gov*.

1819.7206 Agreement contents.

Each mentor-protégé agreement will contain the following elements:

(a) The name, address, e-mail address, and telephone number of the mentor and protégé points of contact;

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé to the mentor and a statement that, at the time the agreement is submitted for approval, the protégé, if an SDB, a women-owned small business, a HUBZone small business, or a veteran-owned or a service-disabled veteran-owned small business concern, does not exceed the size standard for the appropriate NAICS code;

(c) The DUNS number of the mentor and protégé;

(d) A statement that the mentor is eligible to participate in accordance with 1819.7202(a);

(e) A statement that the protégé is eligible to participate in accordance with 1819.7202(b);

(f) A developmental program specifying the type of assistance the mentor will provide to the protégé and how that assistance will—

(1) Increase the protégé's ability to participate in NASA, Federal, and/or commercial contracts and subcontracts; and

(2) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

(g) Factors to assess the protégé's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(h) An estimate of the dollar value and type of subcontracts that the mentor will award to the protégé, and the period of time over which the subcontracts will be awarded;

(i) A statement from the mentor and protégé indicating a commitment to comply with the requirements for reporting in accordance with 1819.7212 and for review of the agreement during the duration of the agreement, and additionally for the protégé, two years thereafter;

(j) Procedures to terminate the agreement in accordance with 1819.7210;

(k) A provision that the term for the agreement will not exceed 3 years for a credit agreement;

(l) Additional terms and conditions as may be agreed upon by both parties; and

(m) Signatures and dates for both parties to the mentor-protégé agreement.

1819.7207 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit to a Small Business Specialist at a NASA Center—

(1) A signed mentor-protégé agreement pursuant to 1819.7206;

(2) The estimated cost of the technical assistance to be provided, broken out per year and per task, in a separate cost volume; and

(3) NASA OSBP may require additional information as requested upon agreement submission.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified prior to the mentor incurring costs for developmental assistance to the protégé.

1819.7208 Award Fee Pilot Program.

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR Phase II Protégés only. The award fee will be assessed at the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans under the Award Fee Pilot Program.

(c) Evaluation criteria to determine the award fee would include:

(1) Active participation in the Program;

(2) The amount and quality of developmental assistance provided;

(3) Subcontracts awarded to small businesses and others;

(4) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(5) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee will also receive credit as described in 1819.7209.

1819.7209 Credit Agreements.

(a) The credit permits the mentor to include the cost it expends on a mentor-protégé agreement as part of any subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan. The following provisions apply to all credit mentor-protégé agreements:

(1) Developmental assistance costs incurred by a mentor for providing assistance to a protégé pursuant to an approved credit mentor-protégé agreement may be credited as if the costs were incurred in a subcontract awarded to that protégé. Credit is given for the sole purpose of determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(2) Other costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan.

(3) The amount of credit a mentor may receive for developmental assistance costs must be reported on a one-to-one basis for all dollars spent.

1819.7210 Agreement terminations.

(a) Agreements may be terminated for cause or on a voluntary basis by the mentor or the protégé. The procedures for agreement termination are outlined in the mentor-protégé agreement template available at *http://www.osbp.nasa.gov*.

(b) NASA OSBP maintains the right to terminate an agreement if milestones provided under the original agreement submission, pursuant to 1819.7206(g), are not satisfactorily achieved, or for other reasons as determined necessary by the NASA OSBP.

1819.7211 Loss of Eligibility.

(a) If the mentor is suspended or debarred while performing under an approved mentor-protégé agreement, the mentor—

(1) May not be reimbursed or take credit for any costs of providing developmental assistance to its protégé, incurred more than 30 days after the imposition of such suspension or debarment; and

(2) Must promptly give notice of its suspension or debarment to its protégé and NASA OSBP.

(b) If the protégé is suspended or debarred while performing under an approved mentor-protégé agreement or the SBA determines that a protégé is ineligible according to program eligibility requirements, then

(1) The mentor shall not be able to receive credit for any of the costs of providing assistance to the protégé after the date of the determination regarding the protégé's loss of eligibility; and

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's suspension or debarment, if participating in the Award Fee Pilot Program.

(c) If the protégé is a Historically Black College or University, or other minority institution of higher education that loses either their accredited or minority status, then:

(1) The mentor shall not be able to receive credit for any the costs of providing assistance to the protégé after the date of the determination regarding the protégé's status.

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's loss of accreditation or minority status.

1819.7212 Reporting requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each six-month period of performance commencing with the start of the agreement.

(c) Each semiannual report must include the following data on performance under the mentor-protégé agreement:

(1) Dollars obligated by NASA (for reimbursable agreements).

(2) Expenditures by the mentor.

(3) The number and dollar value of subcontracts awarded to the protégé.

(4) Description of developmental assistance provided, including milestones achieved.

(5) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) Semiannually, the protégé must provide an independently developed progress report using the semiannual report template, on the progress made during the prior six months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The Protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé semiannual report required by paragraph (d) of this section may be provided with the mentor semiannual report required by paragraph (a) of this section, or submitted separately.

(f) Reports for all agreements must be submitted to the NASA OSBP Mentor-Protégé Program Manager, the mentor's cognizant administrative contracting officer, and their cognizant center small business specialist.

(g) Templates for the semiannual report and the Post-Agreement report and guidance for their submission are available at: *http://www.osbp.nasa.gov*.

1819.7213 Performance reviews.

(a) NASA OSBP will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews will include verification of—

(1) All costs incurred by the mentor under the agreement to determine if they were reasonable in the provision of developmental assistance to the protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(2) The mentor's and protégé's reported progress made by the protégé in employment, revenues, and participation in NASA contracts during the program participation term.

1819.7214 Measurement of Program success.

(a) NASA will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the number and dollar value of contracts and subcontract awards to protégés (under NASA contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the program until two years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protégé (or former protégé) by its mentor (or former mentor); and

(3) An increase in the protégés number of employees from the date of entry into the program until two years after the completion of the agreement.

1819.7215 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protégé Program, in:

(1) Any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) The contracting officer shall insert the clause at 1852.219–79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Sections 1852.219–77 and 1852.219–79 are revised to read as follows:

1852.219–77 NASA Mentor-Protégé Program.

As prescribed in 1819.7215, insert the following clause:

NASA MENTOR-PROTÉGÉ PROGRAM

(XX/XX)

(a) Prime contractors are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

(1) Mentors, which are large businesses and prime contractors with at least one active and approved NASA subcontracting plan;

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, or active NASA SBIR Phase II companies meeting the qualifications defined in FAR Part 2, Definitions of Parts and Terms.

(3) Mentor-protégé agreements, endorsed by the cognizant NASA centers and approved by the NASA Office of Small Business Programs (OSBP);

(4) In contracts with award fee incentives, potential for payment of an award fee for

voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7209.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSBP, Washington, DC 20546, (202) 358–2088, for further information.

(End of clause)

1852.219–79 Mentor requirements and evaluation.

As prescribed in 1819.7215, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION

(XX/XX)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, and active NASA SBIR Phase II companies meeting the qualifications specified in defined in FAR Part 2, Definitions of Parts and Terms.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) To what extent the entities participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semiannual reports shall be submitted by the mentor and the protégé to the cognizant NASA center and NASA Headquarters Office of Small Business Programs (OSBP), following the semiannual report template found on the Web site at *http://www.osbp.nasa.gov*.

(d) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments, as it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7211.

(End of clause)

[FR Doc. E8–21984 Filed 9–18–08; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0096; MO 9221050083–B2]

RIN 1018–AW34

Endangered and Threatened Wildlife and Plants; Listing the Plant Lepidium papilliferum (Slickspot Peppergrass) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public of the reinstatement of our July 15, 2002, proposed rule to list *Lepidium papilliferum* (slickspot peppergrass) as endangered under the Endangered Species Act of 1973, as amended (Act). We announce the reopening of the public comment period on that proposed listing.

DATES: We will accept comments received on or before October 20, 2008.

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

- *Via the Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *By U.S. mail or hand-delivery to:* Public Comments Processing, Attn: RIN 1018–AW34, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will also post any personal information included with your comments (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jeffery L. Foss, Field Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709 (telephone 208–378–5243; facsimile 208–378–5262). If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lepidium papilliferum*;

(2) Additional information concerning the range, distribution, and population size of this species; and

(3) Current or planned activities in the subject area and their possible impact on this species.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

In making a final decision on the proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final rule that differs from the proposal.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection

on *http://www.regulations.gov*, or by appointment, during normal business hours, at the Snake River Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On July 15, 2002, we published a proposed rule (67 FR 46441) to list *Lepidium papilliferum* as endangered under the Act (16 U.S.C. 1531 *et seq.*). For a description of Federal actions regarding *Lepidium papilliferum* prior to that proposed listing rule, please refer to that proposal. Here we provide a summary of the Federal actions concerning *L. papilliferum* from the 2002 proposed listing rule to this action.

We accepted public comments on the July 15, 2002, proposed rule for 60 days, until September 13, 2002. We held a public hearing on August 29, 2002. On September 25, 2002 (67 FR 60206), and again on July 18, 2003 (68 FR 42666), we reopened the public comment period on the proposed listing. On October 30, 2003, we made a Candidate Conservation Agreement (CCA) and a document compiled by the Service entitled ''Best Available Information for Slickspot Peppergrass'' available for public review and comment (68 FR 61821). On January 22, 2004, we published a withdrawal of our proposed rule to list *Lepidium papilliferum* as endangered (69 FR 3094). Our withdrawal was based on our conclusion that evidence of a negative population trend was lacking and that the formalized conservation plans (e.g., the CCA and Integrated Natural Resource Management Plans) had sufficient certainty that they would be implemented and effective such that the risk to the species was reduced to a level below the statutory definition of endangered or threatened.

On April 5, 2004, the Western Watersheds Project filed a complaint challenging our decision to withdraw the proposed rule to list *Lepidium papilliferum* as endangered (*Western Watersheds Project* v. *Jeffery Foss, et al.*, Case No. CV 04–168–S–EJL). On August 19, 2005, the U.S. District Court for the District of Idaho reversed our decision to withdraw the proposed rule, effectively reinstating our July 15, 2002, proposed rule (67 FR 46441). The Court remanded the case to the Secretary of the Department of the Interior for reconsideration of ''whether a proposed rule listing the slickspot peppergrass as either threatened or endangered should be adopted.''

Following the August 19, 2005, remand order, we notified Federal, State, and local agencies, county governments, elected officials, and other interested parties of the District Court's decision in a letter dated October 13, 2005. We requested new scientific data, information, and comments about *Lepidium papilliferum* by November 14, 2005. We also stated that scientific information received from the public would be utilized in an updated document entitled ''Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)'' (BAI), which would combine all existing and new information regarding the species and its habitat. We accepted information through December 14, 2005, and received 13 comment letters in response to our request for additional information. From February 27, 2006, through March 30, 2006, we accepted information from peer reviewers and others on the draft BAI and on conservation efforts for the species. We received an additional 36 comments. On October 23, 2006, we opened an additional 22-day comment period through November 13, 2006 (71 FR 62078) to allow the opportunity for public comment on a variety of documents, including peer review comments on the draft BAI and results of an expert panel workshop. We received 20 comments in response to this request for comments.

On January 12, 2007, we withdrew our proposed rule to list *Lepidium papilliferum* as endangered under the Act (72 FR 1621). This withdrawal was based on our determination that the best available information indicated that, in regard to *Lepidium papilliferum*, ''* * * while its sagebrush-steppe matrix habitat is degraded, there is little evidence of negative impacts on the abundance of *Lepidium papilliferum*, which inhabits slickspot microsites within this system.'' The withdrawal further concluded that annual abundance of the plant is strongly correlated with spring precipitation; therefore, a high degree of variability in annual plant abundance is to be expected. Furthermore, evidence regarding the plant's overall population trend was inconsistent.

Subsequently, on April 16, 2007, the Western Watersheds Project filed another complaint challenging our January 2007 decision to withdraw the proposed rule to list *Lepidium papilliferum* as endangered (*Western Watersheds Project* v. *Jeffery Foss et al.*, Case No. 07–161–E–MHW).

On June 4, 2008, the U.S. District Court for the District of Idaho vacated the Service's January 2007 withdrawal of the proposed listing of *Lepidium papilliferum*, and remanded the decision to the Service for further consideration consistent with the Court's opinion. The Court's action effectively reinstates the July 15, 2002, proposed rule to list *L. papilliferum* as endangered (67 FR 46441). The Service will complete its review of the best available scientific and commercial data, including information and comments submitted during this comment period, as part of the remand process. We will then complete a new listing determination.

Author

The primary authors of this document are the staff at the Snake River Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–21987 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 080416577–81187–02]

RIN 0648–AW73

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 27 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These proposed regulations would amend the Crab Rationalization Program to: implement the statutory requirements of section 122(e) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act that specifically directs NMFS to modify how individual processing quota (IPQ) use caps apply to a person who is custom processing *Chionoecetes opilio* crab in the North Region, clarify that for other crab fisheries, IPQ crab that is processed at a facility through contractual

arrangements with the facility owners would not be applied against the IPQ use cap of the facility owners provided specific conditions are met, and modify IPQ use caps that limit the amount of IPQ that may be used at a facility by persons processing Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received no later than November 3, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–AW73, 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.

Copies of Amendment 27, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the categorical exclusion prepared for this action, and the Environmental Impact Statement (EIS), RIR, IRFA, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). A final rule implementing the Crab Rationalization Program (Program) published on March 2, 2005 (70 FR 10174). Regulations implementing the FMP, and all amendments to the Program are at 50 CFR part 680 and general regulations related to fishery management at 50 CFR part 600.

Program Overview

Harvester, Processor, and Community Provisions

The Program established a limited access privilege program (LAPP) for nine crab fisheries in the BSAI. The Program assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The Class A IFQ and IPQ requirements comprise one of three key measures currently in regulation to help to ensure that catch historically delivered to onshore processors continues to be delivered to processors with historic investment in the fisheries. These measures are intended to provide economic benefits to processors and communities representative of historic delivery patterns. In addition to the Class A IFQ and IPQ requirements, the Program establishes regional delivery requirements and a right of first refusal for the purchase of PQS and IPQ for specific communities.

Although the Class A IFQ and IPQ matching requirements require linkages between harvesters and processors, PQS and the resulting IPQ can be transferred among processors. Therefore, there is no guarantee that crab will continue to be delivered at the same processing facility or community indefinitely. The PQS/IPQ transfer provisions provide processors with the ability to consolidate processing operations, or sell their processing operations to new participants, for economic efficiency. Limits on the total amount of PQS that a person can hold and limits on the total amount of IPQ that a person can use ensure that no person can receive an excessive share of the processing capacity. These limits constrain the ability of processors to maximize the consolidation of processing.

The second key measure established by the Program seeks to ensure that communities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries through regional delivery requirements, commonly known as regionalization. Even if processors transfer their PQS/IPQ, the Program specifies geographic regions where Class A IFQ must be delivered, and where IPQ must be used to receive that crab. The specific geographic regions applicable to Class A IFQ and IPQ are based on historic geographic delivery and processing patterns. Class B, CVC, CPO, and CPC IFQ are not subject to regionalization. For most crab fisheries, CVO QS and the resulting Class A IFQ, and PQS and the resulting IPQ, are regionally designated for the North Region (i.e., north of 54°20′ N. lat.), or the South Region (i.e., any location south of 54°20′ N. lat.) based on the historic delivery and processing patterns of a specific CVO QS or PQS holder. For one fishery, the Western

Aleutian Islands golden king crab fishery, half of the Class A IFQ and IPQ are designated for the West region, west of 174° W. long. and the other half of the Class A IFQ and IPQ are not subject to a regional designation. Two crab fisheries are not subject to regionalization requirements, the eastern Bering Sea and western Bering Sea *C. bairdi* fisheries.

The specific North, South, and West Region boundaries were selected by the Council and implemented in the Program to help ensure that deliveries continue to specific communities historically active as processing centers for various crab fisheries. Some of the major BSAI crab landing ports include the communities of Saint George and Saint Paul in the North Region; Akutan, Dutch Harbor, False Pass, King Cove, Kodiak, and Port Moller in the South Region; and Adak and Atka in the West Region. Table 1 below shows the nine BSAI crab fisheries that are managed under the Program, the relative proportion of CVO QS and PQS assigned to each region, and the resulting pounds of Class A IFQ and IPQ issued for the 2007/2008 crab fishing year and assigned to each region. Due to the biology of crab species and the traditional pattern of harvesting crab between calendar years, IFQ and IPQ is assigned for use during a twelve month period spanning two calendar years called a ''crab fishing year. '' The crab fishing year begins on July 1 and ends on June 30 of the following calendar year. Table 1 indicates that a number of crab fisheries were not open to fishing during the 2007/2008 crab fishing year, and therefore no Class A IFQ or IPQ was issued for those fisheries.

TABLE 1: BSAI CRAB FISHERIES, REGIONS, AND ALLOCATIONS OF QS, PQS, CLASS A IFQ, & IPQ.

Crab fishery	Percentage of CVO QS & PQS assigned to each region	Pounds of Class A IFQ & IPQ assigned to each region based on the 2007/2008 crab fishing year TAC
Eastern Aleutian Islands golden king crab (EAG)	100 % South	2,243,082 lb. South
Western Aleutian Islands golden king crab (WAG)	50 % West 50 % Undesignated	570,932 lb. West 569,855 lb. Undesignated
Western Aleutian Islands red king crab (WAI)	100 % South	-- Fishery Not Open -- No Class A IFQ or IPQ
Eastern Bering Sea Tanner crab C. bairdi) (EBT)	100 % Undesignated	2,525,080 lb. Undesignated
Western Bering Sea Tanner crab (C. bairdi) (WBT)	100 % Undesignated	1,592,952 lb. Undesignated
Bristol Bay red king crab (BBR)	2.7 % North 97.3 % South	388,006 lb. North 14,893,400 lb. South
Bering Sea snow crab (C. opilio) (BSS)	47 % North 53 % South	21,073,807 lb. North 23,957,111 lb. South
Pribilof Islands red and blue king crab (PIK)	67.5 % North 32.5 % South	-- Fishery Not Open -- No Class A IFQ or IPQ
St. Matthew blue king crab (SMB)	78.3 % North 21.7 % South	-- Fishery Not Open -- No Class A IFQ or IPQ

The third key measure established by the Program to protect communities that were historically active processing ports is a right-of-first-refusal (ROFR) to purchase any PQS or IPQ that are derived from processing activities in those communities. The ROFR provision requires that any processor who wishes to transfer the PQS or IPQ in a specific crab fishery originally derived from processing activities in specific communities for use outside of those communities cannot complete that transfer unless they first provide those communities an opportunity to purchase the PQS or IPQ under the same terms and conditions offered to the processor to whom they wish to transfer those shares. The specific communities and fisheries eligible for the ROFR are described in detail later in this preamble. The intent behind the ROFR is to provide communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community. The rationale for the specific fisheries and communities subject to ROFR requirements is described in detail in the EIS prepared for the Program (see **ADDRESSES**).

Use Caps

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, and the resulting annual IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the EIS prepared for the Program (see **ADDRESSES**). To address these concerns, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used onboard a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

Relevant to this proposed action, in each of the nine Program fisheries, a person is limited to holding no more than an amount equal to 30 percent of the PQS initially issued in a given BSAI crab fishery and limited to using no more than the amount of IPQ resulting from 30 percent of the initially issued

PQS in a given BSAI crab fishery. In addition, no person is permitted to use more than 60 percent of the IPQ crab issued in the Bering Sea *C. opilio* fishery designated for exclusive use in the North Region. Finally, no processing facility can be used to process more than 30 percent of the IPQ issued for a crab fishery.

The Program is designed to minimize the potential for a single person to evade the PQS or IPQ use caps through the use of corporate affiliations or other legal relationships. To do this, the Program specifies that the amount of PQS or IPQ that applies to a person's use cap is calculated by summing the total amount of PQS or IPQ (1) held by that person; and (2) held by other persons with PQS or IPQ who are ''affiliated'' with that person through common ownership or control. In addition, any IPQ crab processed at a facility on behalf of an IPQ holder who does not own that facility through ''custom processing arrangements'' is assigned to the IPQ use cap of the facility owner. This proposed action is focused primarily on modifying the application of IPQ crab custom processed at a facility against the IPQ use cap of the owner of that facility.

Affiliated Persons and Custom Processing Arrangements

Under the Program, a person is considered ''affiliated'' with another person if that person has a 10 percent or greater direct or indirect ownership interest in the other person (i.e., a corporation, partnership, or other entity), or that person directs another person's business operations, uses PQS or IPQ, or otherwise has the ability to control that other person (see 50 CFR 680.2 for the definition of ''Affiliation''). Attributing all PQS or IPQ held by persons linked through affiliation to each person in the affiliated group limits the ability of corporations to consolidate PQS and IPQ and avoid PQS and IPQ use caps by owning or controlling that PQS or IPQ through holding companies or other corporate arrangements. In addition, the Program limits the amount of consolidation of processing activity that occurs at any one processing facility. Excessive consolidation could limit potential markets and reduce processing activities in some communities if deliveries of crab were consolidated.

A custom processing arrangement exists when one IPQ holder (1) has a contract with the owners of a processing facility to have his crab processed at that facility; (2) does not have an ownership interest in the processing facility; and (3) is not otherwise affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder essentially contracts with a facility operator to have the crab processed according to his specifications. Custom processing arrangements are typically used when one person holds IPQ designated for a specific region (e.g., North Region *C. opilio* crab), but does not own a shoreside processing facility or cannot economically operate a stationary floating crab processor in that fishery or region. In such a case, a custom processing arrangement with the owner of a processing facility in that region provides an IPQ holder with the opportunity to receive Class A IFQ crab without having to undertake costly measures to establish a physical processing facility.

Amendment 27

Amendment 27 would accomplish three broad goals. First, it would establish regulations necessary to implement section 122(e) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) which became law on January 12, 2007 (Public Law 109–479). Second, it would modify the methods used to calculate and apply use caps when custom processing arrangements occur. Third, it would establish a limit on the maximum amount of processing that may be undertaken at processing facilities in the Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab fisheries.

Section 122(e) of the MSRA specifically directs NMFS to modify how IPQ use caps apply to a person who is custom processing Bering Sea *C. opilio* crab in the North Region. Section 122(e) of the MSRA states:

> (e) USE CAPS.—
>
> (1) IN GENERAL. — Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the North region by a shore-based crab processor.
>
> (2) SHORE-BASED CRAB PROCESSOR DEFINED. — In this paragraph, the term ''shorebased processor'' means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, that is located on shore or moored within the harbor.

To fully implement section 122(e) of the MSRA, NMFS would need to adopt conforming regulations. However, several of the specific terms used in section 122(e), such as ''custom processing arrangements'' and ''moored within the harbor, '' are not defined in the statute or in regulation and no legislative history is available to guide NMFS on how to interpret those terms. In January 2007, NOAA provided guidance to the affected industry on how it intended to enforce section 122(e) of the MSRA without the benefit of regulations that specifically define these terms. NOAA provided this guidance with the expectation that the Council would subsequently provide recommendations to NMFS to amend the Program's regulations after receiving additional input from the affected industry and community interests. As expected, the Council received guidance from the public and in December 2007 adopted recommendations under Amendment 27 to revise the Program to implement section 122(e) of the MSRA.

During the process of defining the terms required to implement section 122(e) of the MSRA, participants in other crab fisheries expressed concerns about the economic viability of their fishing operations and advocated IPQ use cap exemptions for custom processing arrangements similar to those congressionally mandated for the North Region Bering Sea *C. opilio* fishery be considered in other fisheries. Specifically, participants in crab fisheries with historically low TAC allocations or who are active in crab fisheries in more remote regions argued that exempting IPQ crab processed under custom processing arrangements from the IPQ use caps that apply to the owners of facilities could improve their operational efficiency.

After reviewing public comments and analyzing the BSAI crab fisheries, the Council recommended that crab delivered to a facility for custom processing should be exempt from IPQ use caps for specified crab fisheries and regions. The Council recommended that IPQ crab that is, or had once been, subject to ROFR requirements and processed in the community from which that crab was derived (i.e., the community of origin) be exempted from the IPQ use cap of the owner of the facility where those crab are processed. In addition, the Council recommended a limit on the amount of IPQ crab that could be processed at any one facility in the Eastern Aleutian golden king crab and Western Aleutian red king crab fisheries. In December 2007, the Council adopted these recommended changes in addition to the clarifications necessary to implement section 122(e) of the MSRA. This proposed rule would implement the Council's recommendations. The following section describes the changes that this

proposed rule would have on existing Program management.

Proposed Changes to the Program

This proposed rule would modify or add regulations at §§ 680.7(a)(7), 680.7(a)(8), 680.7(a)(9), 680.42(b)(2), and 680.42(b)(7). These proposed changes would apply as described in the following sections of this preamble.

Exempting custom processing arrangements from IPQ use caps

For certain crab fisheries, this proposed rule would remove the requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. The proposed changes to § 680.7(a)(7) would modify the calculation of a person's IPQ use cap to be the sum of the IPQ held by that person, either directly or indirectly through subsidiary corporations, and all IPQ held by any IPQ holders affiliated with that person. Effectively, this change would not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility. A person who holds IPQ and who owns a processing facility would be credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps.

The following example demonstrates how the regulations would be modified by this proposed rule. Person A holds PQS and IPQ, owns a processing facility, and Person A is affiliated with four other PQS/IPQ holders (Persons B, C, D, and E) through common ownership of the companies that hold their PQS/IPQ, delivery contracts that define how their IPQ will be used, and other linkages that create a common ownership or control of their PQS or IPQ. This proposed rule does not change how IPQ use caps apply to a person who is affiliated with other persons. Therefore, the amount of IPQ that is considered to be used by Person A and applied to Person A's use cap is the sum of the IPQ held by Person A, and all of the IPQ held by Persons B through E with whom Person A is affiliated. Similarly, the amount of IPQ considered to be used by each other person (Persons B, C, D, and E) in this commonly affiliated group is the sum of the IPQ held by all the members (Persons A through E) in the group. For this example, Persons B through E receive their IPQ crab at the facility owned by Person A although they are not owners of that facility.

Under this example, a sixth person, Person F, establishes a custom processing arrangement to have his crab processed at the facility owned by Person A. Also assume that Person F is not an owner of that facility, and is not affiliated with Persons A through E. Under existing regulations, Person F's use of IPQ is applied against Person A's IPQ use cap because Person A owns a ten percent or greater interest in the facility where Person F has his crab custom processed, even though Person A and Person F are not otherwise affiliated with each other. Under this proposed rule, the IPQ held by Person F and custom processed at Person A's facility would not apply to the IPQ use cap calculations for Person A.

In sum, the proposed rule would allow processing facility owners who also hold IPQ to be able to use their facility to establish custom processing arrangements with other IPQ holders to process more crab at their facilities, thereby improving throughput and providing a more economically viable processing platform. Conceivably, most or all of the IPQ crab to which the proposed exemption would apply could be processed at a single facility depending on the degree of affiliation that may exist between IPQ holders who have an ownership interest in the facility and the number of IPQ holders that establish custom processing arrangements with a given facility owner. The affiliation relationships among IPQ holders and processing facility ownership can change with time, so the degree of processing consolidation that may occur at a given processing facility in a specific crab fishery cannot be predicted.

Removing IPQ crab under custom processing arrangement from the facility use cap

The proposed rule would amend the regulations at § 680.7(a)(8) so that IPQ crab processed under a custom processing arrangement would not apply against the limit on the maximum amount of IPQ crab that can be processed at a facility in which no IPQ holder has a 10 percent or greater ownership interest. Under existing regulations, a processing facility cannot be used to process more than the amount of IPQ resulting from 30 percent of the PQS in a fishery if no IPQ holder has a 10 percent or greater direct or indirect ownership interest in the processing facility. The current prohibition limits the ability of IPQ holders to evade the IPQ use caps and process all of their crab at one facility by creating a corporate structure where the physical processing facility was held under one corporation that was not linked through common ownership to the corporations holding IPQ. The proposed rule would effectively remove that limit so that more than 30 percent of the IPQ could be processed at a facility in which no IPQ holder has a 10 percent or greater direct or indirect ownership interest in the processing facility, provided those IPQ crab are custom processed at that facility. As an example, if Person Q owned a processing facility but held no IPQ, and Persons R and S held IPQ and established custom processing arrangements with Person Q to have their crab processed at his facility, they could do so in excess of the 30 percent facility use cap. This change would allow plant owners to establish custom processing arrangements in specific crab fisheries.

Removing IPQ crab under custom processing arrangement in the North Region C. opilio fishery from IPQ use cap calculations

The proposed rule would modify regulations at § 679.42(b)(2) so that IPQ crab processed under a custom processing arrangement would not apply against the IPQ use cap limitation that no person can use more than 60 percent of the Bering Sea *C. opilio* IPQ designated for the North Region. This exemption for IPQ crab custom processed in the Bering Sea *C. opilio* fishery in the North Region would meet the intent of section 122(e) of the MSRA to exempt custom processing arrangements from this use cap.

Existing regulations at § 680.7(a)(7) do not allow ''an IPQ holder to use more IPQ crab than the maximum amount of IPQ that may be held by that person. '' Use of IPQ includes all IPQ held by that person and all IPQ crab that are received by any Registered Crab Receiver (RCR) at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect interest. Existing regulations at § 680.42(b) set out the specific PQS and IPQ use caps, which include (1) a PQS use cap of 30 percent of the initial PQS pool for all crab fisheries; (2) an annual IPQ use cap that is equal to the amount of IPQ derived from 30 percent of the initial PQS pool for each fishery; and (3) an annual IPQ use cap of 60 percent for north region Bering Sea *C. opilio* crab.

To conform to section 122(e) of the MSRA, this proposed rule would modify § 680.42(b)(2) to allow persons holding Bering Sea *C. opilio* IPQ designated for delivery in the North

Region to establish custom processing arrangements to have their IPQ crab processed at a facility. The IPQ crab processed under those custom processing arrangements would not apply against the Bering Sea *C. opilio* use cap of IPQ holders who own the facility where those crab are custom processed.

Fisheries subject to custom processing arrangement exemption

The proposed rule would establish regulations at § 680.42(b)(7)(ii)(A) that list Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, Western Aleutian golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab as the six crab fisheries in which IPQ crab that are processed under a custom processing arrangement would not apply against the use cap of IPQ holders who own the facility where those crab are custom processed.

The Council determined that exempting IPQ crab processed under custom processing arrangements from a facility owner's IPQ use cap would likely improve processing efficiencies without adversely affecting community interests. The Council recommended that crab that are custom processed in the Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, and Western Aleutian Islands red king crab fisheries not apply against the IPQ use cap of a processing facility owner because these fisheries historically have relatively small TACs when they are open to fishing, and consolidation of processing at one or a few facilities would improve the economic efficiency of harvesters and processors without having an adverse effect on community interests within the regions where those crab are consolidated. If custom processing is not permitted in fisheries with small TACs, it may not be economically viable for harvesters and processors to deliver and process the limited catch at multiple facilities. These four fisheries are all subject to regional designations (see Table 1) and processing operations could only consolidate within a specific region.

For the Western Aleutian Islands golden king crab fishery, the Council recommended exempting IPQ crab processed under custom processing arrangements from a facility owner's IPQ use cap calculation only if those crab were custom processed at facilities west of 174° W. long. The Council recommended this geographic restriction for the exemption based on the historic landing patterns in the Western Aleutian Islands golden king crab fishery, the processing operations, and the processing opportunities available to the more remote communities of Adak and Atka compared with those in Akutan and Dutch Harbor. The Council concluded that granting an exemption to the IPQ use cap for IPQ crab custom processed west of 174° W. long. could serve to attract processing operations to these more remote communities. Allowing consolidation of IPQ in Adak or Atka could entice harvesters to deliver their undesignated Western Aleutian Island golden king crab west of 174° W. long.

Presumably, these arrangements would be facilitated if harvesters could share some of their operational efficiency benefits with processors. For example, harvesters may accept a lower exvessel price for deliveries to Adak or Atka in exchange for reduced operating costs because vessels would not be required to travel from the fishing grounds to more distant landing facilities (e.g., Dutch Harbor). If the custom processing exemption from IPQ use caps for Western Aleutian Islands golden king crab were not restricted to facilities west of 174° W. long., it could contribute to the consolidation of processing of regionally undesignated shares in Dutch Harbor. The Council considered the relative impacts of processing consolidation on these Aleutian Island communities and judged that there was a greater need to provide additional processing efficiencies and harvester incentives to communities west of 174° W. long. than to communities east of 174° west long. given the limited economic opportunities available in the more remote Aleutian Islands communities.

The Council did not recommend exempting IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of a facility owner for all crab fisheries. Specifically, IPQ crab that are custom processed at a facility would continue to apply to the use cap of IPQ holders who have a 10 percent or greater direct or indirect ownership interest in the facility when those crab are custom processed in the Bristol Bay red king crab fishery, Bering Sea *C. opilio* crab fishery with a South Region designation, Eastern Bering Sea *C. bairdi* crab fishery, Western Bering Sea *C. bairdi* crab fishery, and Western Aleutian Islands golden king crab fishery if those IPQ crab were processed east of 174° W. long. The Council's rationale for not providing a custom processing exemption from the IPQ use caps for these fisheries follows.

First, Bristol Bay red king crab is assigned a relatively large TAC; 97.3 percent of the IPQ is designated for the South Region (see Table 1), and the Council did not judge that additional opportunities for consolidation were needed to facilitate economically efficient operations among the multiple processors in the South Region. Due to the limited TAC assigned in the North Region, processors can easily consolidate processing operations at a single facility. Second, Bering Sea *C. opilio* crab with a South Region designation also is assigned a relatively large TAC, and the ability to deliver to multiple processors in the South Region reduces the need to exempt custom processing arrangements from the use cap calculation. The Council did not judge that it needed to encourage additional consolidation in the processing operations for this fishery to encourage economically efficient processing. Third, Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location. Fourth, as explained above, exempting Western Aleutian Island golden king crab custom processed east of 174° W. long. is not necessary given the multiple delivery locations available to harvesters delivering east of 174° W. long.

Facilities where custom processing arrangements are exempt from use caps

The proposed rule would establish regulations at § 680.42(b)(7)(ii)(B) that would exempt IPQ crab under custom processing arrangements in the crab fisheries described in the previous section of this preamble and listed under the proposed rule at § 680.42(b)(7)(ii)(A) from applying to the IPQ use cap of the owner of that facility if that facility met specific requirements. Consistent with section 122(e) of the MSRA, the Council recommended that any IPQ crab that were custom processed would not count against the IPQ use cap of persons holding a 10 percent or greater direct or indirect ownership interest in the facility where those IPQ crab were custom processed if the facility is: (1) in a home rule, first class, or second class city in the State of Alaska on the effective date of this rule; and (2) either a shorebased crab processor (i.e., shoreside), or at a stationary floating crab processor that is moored within a harbor, at a dock, docking facility, or other permanent

mooring buoy, with specific provisions applicable to the City of Atka.

The Council recommended that facilities would have to be located within specific municipal designations used by the State of Alaska to ensure that the custom processing exemption would not serve as an incentive for crab to be processed outside of communities historically active in crab processing. This proposed requirement helps to ensure these communities continue to receive economic benefits from crab processing, including tax revenue, employment opportunities, and subsidiary benefits that arise from processing operations such as additional freight service. As described in the analysis prepared for this proposed action, almost all IPQ crab delivered to shoreside or to stationary floating crab processors are currently processed in home rule, first class, or second class cities, and this proposed action would not be expected to limit custom processing arrangements that are likely to occur (see **ADDRESSES**). This requirement would not contravene or otherwise be inconsistent with the intent of section 122(e) of the MSRA to allow custom processing in the Bering Sea *C. opilio* fishery by shoreside processors.

In addition to the requirement that a facility be located in a home rule, first class, or second class city, the facility would need to be a shoreside processor, or be a stationary floating crab processor that is moored, at a dock, docking facility, or other permanent mooring buoy located in a harbor within the municipal boundaries of the city. An exemption to the requirement that a stationary floating crab processor must be moored within a harbor, at a dock, docking facility, or other permanent mooring buoy would be provided for the City of Atka as described below.

The requirement that a stationary floating crab processor be moored within a harbor within city boundaries is consistent with the statutory language of section 122(e) of MSRA. Although section 122(e) applies only to the *C. opilio* fishery in the North Region, the Council, with one exception for the City of Atka, did not wish to apply different standards to the use of stationary floating crab processors for purposes of applying an IPQ use cap exemption for custom processed crab in different crab fisheries. NMFS anticipates that a uniform standard would reduce confusion among fishery participants and ease enforcement of this provision.

Applying a requirement that a stationary floating crab processor be moored within a harbor would ensure that communities would continue to benefit economically if the IPQ use cap exemption on custom processing were approved. Although workers at a stationary floating crab processor are likely to spend less time on shore and in local businesses than shoreside plant workers, these floating processor workers are likely to occasionally frequent local businesses. The use of a dock, docking facility, or permanent mooring buoy within a harbor to qualify for the exemption is likely to ensure some use of local services by both the processing platform and its employees.

The Council recommended that a stationary floating crab processor would not be required to be moored within a harbor in the city of Atka. Currently, the city of Atka lacks an onshore processing facility capable of processing crab economically. Additionally, the harbor of Nazan Bay, located along the city shoreline, has limited docking space and lacks permanent mooring facilities. These conditions do not appear to exist in other cities with substantial history of crab processing, and so an exemption to the mooring requirements does not appear necessary in other communities where custom processing is likely to occur. By not requiring moorage at specific facilities in Nazan Bay, neither the City of Atka, nor processors, would have to incur the costs of developing docks or permanent moorage. It is possible that, if a processor chooses to process in Atka regularly, that processor will choose to either develop the onshore processing plant's capacity to handle crab or install docking or moorage that will support a stationary floating crab processor. Allowing processing on stationary floating crab processors within the municipal boundaries of the city of Atka, but not requiring that they be docked or permanently moored, could contribute to the economic development of the city of Atka, and ultimately could encourage the development of permanent mooring facilities or onshore processing facilities in Atka.

NMFS proposes defining the home rule, first class, second class cities and the boundaries of those cities in existence as of the effective date of the rule. Fixing the specific communities and their boundaries would facilitate compliance with this provision by ensuring that future actions by these municipalities or the State of Alaska to redesignate them or modify their boundaries would not have adverse effects on processors who are relying on the existing municipalities and the boundaries of those existing municipalities.

Use cap exemptions for IPQ crab subject to ROFR requirements

The proposed rule would add regulations at § 680.42(b)(7)(ii)(C) to exempt IPQ crab derived from PQS that is, or once was, subject to ROFR requirements and that is to be custom processed within the boundaries of an eligible crab community (ECC) with whom the ROFR contract applies, or did, apply from the IPQ use cap of the owner of the facility where those crab are custom processed. Any IPQ crab derived from this PQS and custom processed within that community would be exempt from the IPQ use cap of persons who own the crab processing facility.

The Council recommended this provision to ensure that if PQS/IPQ has been transferred from the initial recipients of that PQS/IPQ to another person, the ECC with whom the original PQS/IPQ holder had a ROFR contract could continue to receive the economic benefit of having that crab custom processed within the community. In some instances, the combination of consolidation of PQS/IPQ holdings among processing companies and the application of the IPQ use cap to crab custom processed at a facility in these ECCs to the owner of that facility could limit the retention of processing activity in the community from which those IPQ were derived. Trends in processing capacity consolidation that have occurred under the Program, and are described in the analysis prepared for this proposed action, support this requirement (see **ADDRESSES**).

The proposed rule would allow IPQ crab fisheries that are subject to ROFR contract requirements to be custom processed at a facility and not applied against the IPQ use cap of the facility owner only within the eight ECCs with current or former ROFR agreements. The fisheries subject to ROFR contract requirements are the Eastern Aleutian Islands golden king crab, Bristol Bay red king crab, Bering sea *C. opilio* crab, Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries. The eight ECCs are Akutan, Dutch Harbor, False Pass, King Cove, Kodiak, Port Moller, Saint George, and Saint Paul. The net effect of this provision would be to allow consolidation of processing through custom processing arrangements in these specific communities that are historically dependent on crab processing operations.

This provision would differ from the more general custom processing IPQ use cap exemptions in several ways. First, processing could only occur within the

boundaries of the ECCs. All of the ECCs, with the exception of Port Moller, are home rule, first class, or second class cities under State of Alaska law. Port Moller is defined as a census designated place with specific boundaries defined by the U.S. Census.

Second, Bristol Bay red king crab as well as Bering Sea *C. opilio* crab designated for either the North or the South Region could be custom processed at facilities within the ECCs and would not apply to the IPQ use cap of the facility owners. This provision would allow ECCs to continue to receive the economic benefits from the IPQ derived from PQS earned within those communities.

Third, only IPQ derived from PQS that is, or was, subject to a ROFR with an ECC and transferred to another person could be custom processed at a facility within that community, and not apply to the IPQ use cap of the owner of the facility. As an example, if a person receives Bristol Bay red king crab IPQ by transfer that is, or was, derived from PQS subject to a ROFR contract in Akutan and custom processes those IPQ crab in Sand Point, the use of that IPQ would apply against the IPQ use cap of the facility owner in Sand Point. However, if a person received Bristol bay red king crab IPQ by transfer that is, or was, derived from PQS subject to a ROFR contract in King Cove and custom processes those IPQ crab in King Cove, those IPQ would not apply against the IPQ use cap of the facility owner in King Cove. Again, this provision would ensure that the relief from the IPQ use cap for custom processed IPQ crab applies only to IPQ crab that are custom processed in the ECC that has, or had, a ROFR contract on the PQS that gave rise to those IPQ. This provision would maintain the Council's goal of providing economic benefits to historically active crab processing communities.

Fourth, this provision would not require that these IPQ crab be processed at specific types of facilities, only that the IPQ crab be processed within the boundaries of the ECC. This would not require the IPQ crab to be processed only onshore or on stationary floating crab processors that are moored at a dock or a permanent mooring buoy in a harbor. Crab could be processed at any facility onshore or at any stationary floating crab processor within the boundaries of the eligible crab community. The Council did not recommend, and this proposed rule would not implement, more restrictive provisions on the processing facilities that could be used when custom processing IPQ crab under this exemption. The Council did not recommend more restrictive facility requirements because such requirements could limit the ability of ECCs to receive benefits that may arise from establishing custom processing arrangements within their communities.

IPQ use cap for Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab

The proposed rule would add regulations at § 680.7(a)(9) to prohibit a person from processing more than 60 percent of the IPQ issued for the Western Aleutian Islands red king crab or Eastern Aleutian Islands golden king crab fisheries in a crab fishing year at a single processing facility east of 174° W. long. This provision would apply to all IPQ processed at a shoreside crab processor or stationary floating crab processor, and would not exempt IPQ crab that are delivered under a custom processing arrangement from IPQ use cap calculations. As noted earlier in this preamble, both of these fisheries were issued PQS with only a South Region designation (see Table 1). Although the Western Aleutian Islands red king crab fishery is closed, at this time, the analysis prepared for this action indicates that when it is open for fishing, the Western Aleutian Islands red king crab fishery has a small TAC relative to other BSAI crab fisheries (see **ADDRESSES**). The Council's intent behind this provision was to limit the potential consolidation of IPQ that could occur under the custom processing exemptions proposed under this rule. This proposed change to the regulation seeks to prevent a potentially undesirable consolidation on the number of markets available to harvesters, a scenario that is more likely in these fisheries given their historically relatively small TACs compared to other crab fisheries.

In addition, this provision would minimize the potentially adverse effects on processing facilities west of 174° W. long. if all of the IPQ were consolidated in processing facilities east of 174° W. long. Due to the limited TAC in the Eastern Aleutian Islands golden king crab fishery, and the currently limited number of PQS holders, it is conceivable that processing could consolidate in one or a few facilities in Dutch Harbor or other ports where PQS holders in this fishery currently own processing facilities. Processors owning facilities west of 174° W. long. expressed concern about their ability to effectively compete in these fisheries if all of the catch were processed in one facility east of 174° W. long. This proposed action would require that a minimum of two processing facilities be used if Eastern Aleutian Islands golden king crab or Western Aleutian Islands red king crab were processed east of 174° W. long.

Classification

The Assistant Administrator for Fisheries, NMFS, has determined that this proposed rule is consistent with Amendment 27, the Magnuson-Stevens Act and other applicable laws.

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

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have. Copies of the RIR prepared for this proposed rule are available from NMFS. Additionally, an IRFA was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the Program on small entities.

The IRFA for this proposed action describes in detail the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities.

The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here. The directly regulated entities under this proposed rule are holders of PQS or IPQ. The IRFA estimates that currently 29 persons hold PQS. Eleven of the PQS holders are estimated to be large entities, leaving 18 small entities that would be directly regulated by the proposed action. The IRFA notes that estimates of the number of small entities directly regulated by this proposed action are complicated by limited share

holder information, and are based on available records of employment, information on participation in processing activities in other fisheries, and available knowledge of foreign ownership of vertically integrated processing companies. The estimate of the number of small entities is conservative, and may be fewer than 18.

The proposed rule would not change or require additional existing reporting, recordkeeping, and other compliance requirements. The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

All of the directly regulated entities would be expected to benefit from this action relative to the status quo alternative because it would relieve requirements that limit their ability to consolidate processing operations that may provide additional benefits relative to the status quo. Small entities that wish to employ the custom processing services of large entities that are constrained by the cap, would be able to use those services under the custom processing exemption under the proposed rule. These small entities could benefit from an additional market for custom processing services that might not exist in the absence of the custom processing exemption. The IRFA notes that a potentially competing effect could arise if small entities that wish to increase their processing capacity, by providing custom processing services, were to confront additional competition in the market for providing those services from large entities who would otherwise have been constrained by the cap.

Two alternatives were considered, with numerous options and suboptions under those alternatives. These options and suboptions included analysis of various alternatives for the specific fisheries subject to custom processing exemptions, the types of processing facilities at which a custom processing exemption could apply, and the amount of the IPQ use limitation at a facility for Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. The combinations of these options and suboptions under the two alternatives effectively provided numerous alternatives for analysis. Compared with the status quo, the proposed action selected by the Council would be the alternative that would minimize adverse economic impacts on the individuals that are directly regulated small entities.

Although the alternatives under consideration in this proposed action would have distributional and efficiency impacts for directly regulated small entities, in no case are these combined impacts expected to be substantial. The status quo alternative would not allow the additional processing efficiencies that were the motivation for the action. However, exempting processors from use caps under custom processing arrangements would provide additional processing opportunities for small entities that wish to reduce costs by consolidating operations with other processors. Although neither of the alternatives is expected to have any significant economic or socioeconomic impacts, the preferred Alternative 2 minimizes the potential negative impacts that could arise under Alternative 1, the status quo alternative.

Collection-of-Information

This proposed rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: September 15, 2008.

Samuel D. Rauch III

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

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 108–199; Pub. L. 109–241; Pub. L. 109–479.

2. In § 680.7, paragraphs (a)(7) and (a)(8) are revised, and paragraph (a)(9) is added to read as follows:

§ 680.7 Prohibitions.

* * * * *

(a) * * *

(7) For an IPQ holder to use more IPQ crab than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person, and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest unless that IPQ crab meets the requirements described in § 680.42(b)(7).

(8) For a shoreside crab processor or stationary floating crab processor that does not have at least one owner with a 10 percent or greater direct or indirect ownership interest who also holds IPQ in that crab QS fishery, to be used to receive in excess of 30 percent of the IPQ issued for that crab fishery unless that IPQ crab meets the requirements described in § 680.42(b)(7).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to process more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries.

* * * * *

3. In § 680.42, paragraph (b)(2) is revised, and paragraph (b)(7) is added to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ and IPQ.

* * * * *

(b) * * *

(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year except that a person who:

(i) Holds IPQ; and

(ii) Has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed will not be considered to use any IPQ in the BSS crab QS fishery with a North region designation if that IPQ meets the requirements described in paragraph (b)(7) of this section.

* * * * *

(7) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed under § 680.7(a)(7) or § 680.7(a)(8) if:

(i) That RCR is not affiliated with an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed; and

(ii) The following conditions apply:

(A) The IPQ crab is:

(*1*) BSS IPQ crab with a North region designation;

(*2*) EAG IPQ crab;

(*3*) PIK IPQ crab;

(*4*) SMB IPQ crab;

(*5*) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude; or

(*6*) WAI IPQ crab; and

(B) That IPQ crab is processed at

(*1*) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule; or

(*2*) Any stationary floating crab processor that is:

(*i*) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule;

(*ii*) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(*iii*) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on the effective date of this rule in which case that stationary floating crab processor is not required to be located within a harbor; or

(C) The IPQ crab is:

(*1*) Derived from PQS that is, or was, subject to a ROFR as that term is defined at § 680.2;

(*2*) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at § 680.41;

(*3*) Received by an RCR who is not the initial recipient of those PQS; and

(*4*) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

* * * * *

[FR Doc. E8–21989 Filed 9–18–08; 8:45 am]

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Notices

Federal Register
Vol. 73, No. 183
Friday, September 19, 2008

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment for Department of Defense Rehabilitation Treatment Measures

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to issue program comments for Department of Defense Rehabilitation Treatment Measures.

SUMMARY: The Advisory Council on Historic Preservation is considering issuing a Program Comment for the Department of Defense setting forth how it will comply with Section 106 of the National Historic Preservation Act when rehabilitating exterior building elements that are character-defining features of historic properties. The Advisory Council on Historic Preservation seeks public input on the proposed Program Comment.

DATES: Submit comments on or before October 20, 2008.

ADDRESSES: Address all comments concerning this proposed Program Comment to Hector Abreu Cintron, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Fax (202) 606–8647. You may submit electronic comments to: *habreu@achp.gov.*

FOR FURTHER INFORMATION CONTACT: Hector Abreu Cintron, (202) 606–8517, *habreu@achp.gov.*

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (''ACHP'') a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment and by following the steps set forth in that comment.

The ACHP is now considering issuing a Program Comment to the Department of Defense (DoD), covering rehabilitation treatment measures for: (1) The removal of mortar joints and repointing; (2) preparation of lime and cement-amended mortars; (3) preparation of lime- or Portland-based stucco; (4) identifying masonry types and failures; and (5) repair and replacement of historic stucco. The Program Comment would include a process for adding new rehabilitation treatment measures, updating existing ones, and removing those that may not be working as intended.

The text of the draft Program Comment, minus its appendices, can be found at the end of this notice. The appendices comprise the technical substance of each of the original five rehabilitation treatment measures and their two implementation guidance documents. Due to their volume, they will not be copied into this notice. However, they can be accessed in their entirety on the Internet at: *http://www.achp.gov/masonryst.html.* Those without access to the Internet can contact Hector Abreu Cintron at 202–606–8517, or by e-mail at habreu@achp.gov, to arrange an alternate method of access to the appendices.

I. Background on Previous Proposal for a ''Standard Treatment''

Originally, the ACHP and DoD had proposed handling these rehabilitation treatment measures as part of a ''Standard Treatment'' applicable to all Federal agencies. The ACHP sought public comment on that proposal on June 12, 2008 (73 FR 33387–33389). However, after considering the resulting public comments, the ACHP met with DoD and recommended that the rehabilitation treatment measures be handled as a ''Program Comment'' applicable only to DoD.

In general terms, a ''standard treatment'' is an ACHP approved method that, if used, assists Federal agencies in satisfying their responsibilities under the regular Section 106 process. However, standard treatments do not redefine the regular Section 106 process. An agency must still go through all the regular steps of the Section 106 process before using a standard treatment. So, for example, a Federal agency still has to consult with various parties in identifying the area of potential effects and historic properties within it, and determining whether such historic properties may be affected, before using a standard treatment to either facilitate the determination of adverse effects or facilitate negotiation of an agreement to resolve the adverse effects under the regular process.

While standard treatments have great value in facilitating the regular Section 106 process, the ACHP came to the conclusion that a more streamlined approach was warranted for handling the rehabilitation treatment measures at issue, particularly considering that they are drafted so as to meet the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards), 36 CFR part 67. A ''Program Comment'' provides such a streamlined approach. Rather than having DoD go through the entire, regular Section 106 process for rehabilitation activities that will meet the Secretary's Standards, the Program Comment redefines that regular process so that DoD can comply with Section 106 for its rehabilitation activities by simply following the rehabilitation treatment measures appended to the Program Comment and keeping a record of its actions.

The public comments received on the originally proposed standard treatment also made it clear that it would be preferable to limit the number of the initial rehabilitation treatment measures to the five indicated above. Under the original draft standard treatment, eighteen rehabilitation treatment measures had been proposed. They included measures regarding historic mortar, historic stucco, historic brick, terra cotta and ceramics, historic adobe

masonry units, stone, masonry restoration, identification of masonry types and failure, and masonry cleaning. The public comments indicated the need to engage in fairly involved technical edits and to more closely examine various issues with several of the rehabilitation treatment measures. So, a decision was made to limit the number of initial rehabilitation treatment measures to a more manageable group and work to improve those.

The public comments, and further internal discussion, also highlighted concerns about standard treatments that would be open to use by all Federal agencies, when some of those agencies may have neither the expertise nor the supervisory capacity to ensure the rehabilitation treatment measures are carried out correctly and consistently. Accordingly, the ACHP has decided to change the draft so that it: (a) Only applies to DoD; (b) includes a recordkeeping mechanism that will help keep track on how the rehabilitation treatment measures are being carried out; (c) specifically allows for updating existing rehabilitation treatment measures and removing those that are not working as intended; and (d) provides for annual meetings to maintain oversight regarding how the Program Comment is working.

II. Background on the Proposed Program Comment

As indicated above, the ACHP and DoD collaborated to develop various rehabilitation treatment measures to address rehabilitation of exterior building elements that are character defining features of historic properties.

The goal is to encourage use of the Secretary's Standards through the use of rehabilitation treatment measures that detail construction specifications for routine repair and maintenance undertakings that are consistent with those Secretary's Standards, and therefore expected to have no adverse effects on historic properties.

Those rehabilitation treatment measures are designed to codify the numerous ''industry standard'' practices associated with routine repair and maintenance of historic properties. The appendices to the Program Comment currently under consideration include the two implementation guidance documents (numbered 01060.01 and 01091.01) and the following five treatments measures:

04100 Historic Mortar

(1) 04100.01 Removal of Mortar Joints and Repointing

(2) 04100.02 Preparation of Lime and Cement Amended Mortars

04110 Historic Stucco

(3) 04110.01 Preparation of Lime or Portland Based Stucco

(4) 04110.02 Repair and Replacement of Historic Stucco

04400 Stone

(5) 04400.01 Identifying Masonry Types and Failures

DoD has consulted with the ACHP, the National Park Service (NPS), the National Conference of State Historic Preservation Officers, the National Trust for Historic Preservation and the DoD Historic Preservation Working group. The NPS has been a vital partner in reviewing the draft standard treatments to verify that they are consistent with the Secretary's Standards.

After considering the public comments resulting from the June 12, 2008 **Federal Register** notice (when the rehabilitation treatment measures were presented as part of a ''standard treatment''), DoD and the ACHP initiated talks with some of those who provided those comments, and particularly with representatives of the American Institute of Architects, and the American Institute for the Conservation of Historic and Artistic Works.

As a result of those talks, DoD and the ACHP will be revising the mentioned five rehabilitation treatment measures. The original treatment measures were developed for use on historic properties and provided an overview of accepted conservation practices. However, upon further revision it became apparent that their original scope was method based. Most complex conservation application should be subjected to a thorough understanding of the historic resource, its problems, and the work to be accomplished. Many of these applications are extremely complex and require a thorough diagnostic process prior to the execution of any specification.

Therefore, during the present public comment period, the ACHP, DoD, and the NPS will work on modifying the specifications. The new program comment specifications will emphasize industry acceptable conservation performance practices that require minimal pretesting and support cyclical maintenance schedules. Specification will emphasize the gentlest methods possible with materials and techniques whose application will support the stewardship responsibilities of DoD with their historic resources. The current set of proposed specifications will require a minimum of diagnostic pretesting due to their common applicability by the industry and extensive prior vetting of their technical validity by conservation experts. These common maintenance specifications are currently being discussed with key experts in the conservation field as well as with the National Park Service to ensure their consistency with the Secretary's Standards when applied under the conditions set out in the Program Comment.

They will also further clarify the role of conservators and architects (professionally qualified) versus the role of the contractor. The conservator/architect would always be responsible for diagnostic surveys and materials testing, in addition to approval of mock-ups (as is already documented).

Please understand that these modifications are not yet reflected in the rehabilitation treatment measures that you will find at *http://www.achp.gov/masonryst.html.* The modifications are outlined here so the public interested in commenting is aware of them and may be able to comment on the direction the ACHP plans to take.

III. Expected Benefits

This Program Comment was conceived to promote best preservation practices within the military.

As explained above, the Program Comment and its rehabilitation treatment measures were conceived as a way to assist DoD in rehabilitating its large inventory of historic properties without getting bogged down in an unnecessarily long Section 106 process, particularly since use of the rehabilitation treatment measures (which are consistent with the Secretary's Standards) would not result in adverse effects.

Once the public comments resulting from this notice are considered, and edits are incorporated as deemed appropriate, the ACHP will decide whether to issue the Program Comment. The ACHP expects to make that decision at its upcoming quarterly meeting scheduled on November 14, 2008 in Washington, DC.

IV. Text of the Proposed Program Comment

As stated above, the appendices to the proposed Program Comment comprise the substantive rehabilitation treatment measures and the two implementation guidance documents. Due to their volume, they will not be copied into this notice. However, they can be accessed on the Internet at *http://www.achp.gov/masonryst.html.* Again, various modifications to those rehabilitation treatment measures, while

outlined above to help the public understand the direction being considered, will not be reflected on the versions at the cited Web address. The ACHP, DoD, NPS and others will be working to incorporate such modifications during the public comment period.

Those without access to the Internet can contact Hector Abreu Cintron at 202–606–8517, or by e-mail at *habreu@achp.gov* to arrange an alternate method of access to the documents.

The following is the text of the Program Comment, minus the appendices:

Program Comment for Department of Defense Rehabilitation Treatment Measures

I. *Establishment and Authority:* This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on (date of establishment) pursuant to 36 CFR 800.14(e).

It provides the Department of Defense (DoD) with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, 36 CFR part 800 (Section 106), with regard to the effects of rehabilitation treatment measures appended to this Program Comment.

The intent of this Program Comment is to reduce compliance timeframes for routine repair and maintenance undertakings involving historic properties where DoD chooses to repair and maintain those resources in accordance with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67 (Secretary's Standards for Rehabilitation).

II. *Applicability to Department of Defense:* Only DoD may use this Program Comment.

III. *Date of Effect:* This Program Comment will go into effect on (date of establishment).

IV. *Use of Rehabilitation Treatment Measures To Comply With Section 106 Regarding Their Effects:*

(1) DoD may comply with Section 106 regarding the effects of rehabilitation treatment measures on historic properties, and those properties whose eligibility has not yet been determined, by:

(i) Conducting such work as provided by the relevant rehabilitation treatment measure(s) appended to this document, in conformance with the implementation guidance documents numbered 01060.01 and 01091.01 in those appendices;

(ii) Ensuring that all work described in the rehabilitation treatment measures is conducted under the supervision and approval of a cultural resources professional who meets the relevant standards outlined in the Secretary of the Interior's Professional Qualification Standards, pursuant to 36 CFR part 61 (Secretary's Standards on Professional Qualification); and

(iii) Keeping a record, at the relevant DoD installation, detailing each use of a rehabilitation treatment measure under this Program Comment for no less than five years from the final date of the implementation of the rehabilitation treatment measure. Each record must include the following information:

(a) A description of the implementation of the rehabilitation treatment measure (including the specific location of the treatment);

(b) the date(s) when the rehabilitation treatment measure was implemented;

(c) the name(s) of the personnel that carried out and/or supervised the use of the rehabilitation treatment measure;

(d) a summary of the treatment implementation, indicating how the rehabilitation treatment measure was carried out, any problems that arose, and the final outcome; and

(e) a summary of any refinements to the rehabilitation treatment measures that the installation and relevant State Historic Preservation Officer (SHPO) have agreed upon per Stipulation IV(4), below. DoD must provide copies of these records, within a reasonable timeframe, when requested by the ACHP or the relevant SHPO.

(2) Before it begins using this Program Comment, a DoD installation must provide written notification to the relevant SHPO stating that it intends to begin using it and specifying which rehabilitation treatment measures it deems appropriate for use with regard to the historic properties at the installation. The installation may begin using this Program Comment 30 days after such notification.

(3) A DoD installation must also provide written notification to the relevant SHPO when it intends to begin using a rehabilitation treatment measure that has been added to this Program Comment per Stipulation VI. The installation may begin using such an added rehabilitation treatment measure 30 days after such notification.

(4) If, in the opinion of a DoD personnel or DoD contractor meeting the Secretary's Standards on Professional Qualification, quantifiable scientific or qualitative historic data indicates that a rehabilitation treatment measure covered by this Program Comment should be refined to accommodate a specific material or rehabilitation technique that is more suitable for the relevant historic properties at the installation and/or that more specifically meets the intent of the Secretary's Standards for Rehabilitation, the installation shall notify the relevant SHPO of that proposed refinement. (An example of a refinement would be the selection of a mortar joint profile appropriate for the historic property under consideration.) If, within 30 days of receiving that notification, the relevant SHPO disputes whether the proposed refinement to the rehabilitation treatment measure meets the Secretary's Standards for Rehabilitation, the installation and the relevant SHPO shall consult to attempt to resolve that dispute. If the relevant SHPO and the installation agree to a proposed refinement, or the relevant SHPO fails to dispute it within the 30-day period, the installation may proceed in accordance with the proposed refinement. Consultation about, and agreement or disagreement regarding, proposed refinements does not affect the ability of an installation to continue using this Program Comment and any of its existing rehabilitation treatment measures.

V. *Program Comment Does Not Cover Aspects of Undertakings Beyond the Specific Rehabilitation Treatment Measures:* While DoD may comply with Section 106 regarding the effects of rehabilitation treatment measures on historic properties in accordance with this Program Comment, the effects of those aspects of its undertakings that are not specifically covered by the appended rehabilitation treatment measures must still undergo Section 106 review in accordance with the process found at 36 CFR 800.3 through 800.7, or applicable alternatives under 36 CFR 800.14 other than this Program Comment. For example, a DoD undertaking that includes the treatment of the exterior masonry of a historic building (in accordance with a rehabilitation treatment measure of this Program Comment) and the demolition of its interior walls, will still have to undergo Section 106 review outside this Program Comment for those aspects of the undertaking involving the demolition of the interior walls.

VI. *Process for Adding or Updating Rehabilitation Treatment Measures:* While this Program Comment, as originally adopted, was limited to five rehabilitation treatment measures, the ACHP expects more rehabilitation treatment measures to be added to it. The ACHP also expects that rehabilitation treatment measures included in the Program Comment may

eventually need updating. Accordingly, rehabilitation treatment measures may be added to this Program Comment, or updated, as follows:

(1) DoD will notify the ACHP, the National Conference of State Historic Preservation Officers (NCHSPO), and DOI (collectively, parties) that it wants to add a rehabilitation treatment measure to the Program Comment, or to update a rehabilitation treatment measure that is already a part of the Program Comment. Such a notification will include a draft of the proposal.

(2) The parties will provide a copy of the draft to the National Trust for Historic Preservation, the American Institute of Architects, the American Institute for the Conservation of Historic and Artistic Works, and the Association for Preservation Technology, and consult with them before finalizing the proposal. The parties may invite other entities, including members of professional associations with expertise on the particular subject matter of the proposed rehabilitation treatment measure or update, to the consultation.

(3) After such consultation, DoD will submit the finalized version to DOI with a request for confirmation from DOI that the proposed rehabilitation treatment measure or update meets the criteria set forth in the Secretary's Standards for Rehabilitation. DOI will have 45 days to provide a written response to DoD. Should DOI determine that the proposed rehabilitation treatment measure or update does not meet the Secretary's Standards for Rehabilitation, DoD may consult with those listed on sub stipulations (1) and (2), above, and revise the proposal for reconsideration by DOT.

(4) After DOI confirmation that the proposal meets the Secretary's Standards for Rehabilitation, or after the allotted 45 days pass without a DOI response (at which point, DOI confirmation will be assumed), DoD may submit the finalized version to the ACHP Executive Director. If the ACHP Executive Director approves it, the ACHP will publish a notice of availability of the approved addition or update in the **Federal Register**. The addition or update will go into effect upon such publication.

VII. *Process for Removing Rehabilitation Treatment Measures:* The ACHP may remove a rehabilitation treatment measure from the Program Comment by publishing a **Federal Register** notice to that effect. The Program Comment will continue to operate with the other rehabilitation treatment measures that have not been removed.

VIII. *Latest Version of the Program Comment:* DoD and/or the ACHP will include the most current version of the Program Comment (with the latest amendments and updates) in a publicly accessible Web site. The latest Web address for that site will be included in each of the **Federal Register** notices for amending, removing or updating rehabilitation treatment measures in the Program Comment. This document and its appended rehabilitation measures will initially be available at *https://www.denix.osd.mil/ProgramAlternatives*.

IX. *Annual Reports and Meetings:* The parties shall meet once a year, in November, to discuss the implementation of the Program Comment and to consider whether rehabilitation treatment measures that have not been updated in five years should be updated in accordance with Stipulation VI. At least 60 days prior to such meetings, the parties may request of DoD more information on any issues at specific military installations. DoD will collect information from these military installations on their experience, for the previous twelve months, on how often and where the Program Comment has been utilized, examples of successful implementation, and examples of failures or problems with implementation.

X. *Amendment:* The ACHP may amend this Program Comment (other than the appended rehabilitation treatment measures themselves, which are amended according to Stipulations VI and VII, above) after consulting with the parties and publishing a **Federal Register** notice to that effect.

XI. *Termination:* The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

XII. *Sunset Clause:* This Program Comment will terminate on its own accord on November 1, 2018, unless it is amended before that date to extend that period.

XIII. *Historic Properties in Tribal Lands and Historic Properties of Significance to Indian Tribes and Native Hawaiian Organizations:* This Program Comment does not apply in connection with effects to historic properties that are located on tribal lands and/or that are of religious and cultural significance to Indian tribes or Native Hawaiian organizations.

XIV. *Definitions:* The definitions found at 36 CFR part 800 apply to the terms used in this Program Comment.

XV. *Rehabilitation Treatment Measure Appendices:* (starting on next page).

Authority: 36 CFR 800.14(e).

Dated: September 15, 2008.

John M. Fowler,

Executive Director.

[FR Doc. E8–21885 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 15, 2008.

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

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

Rural Utilities Service

Title: 7 CFR 1726, Electric System Construction Policies and Procedures—Electric.

OMB Control Number: 0572–0107.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended, (RE ACT) in Sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural electrification, Section 4 of the RE Act further requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. RUS will collect information using various RUS forms.

Need and Use of the Information: RUS will collect information to implement certain provisions of the RUS standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. The information will be used by RUS electric borrowers and their contractors and by RUS. If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and each document submitted by a borrower would require extensive and costly review by both RUS and the Office of the General Counsel.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,210.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 104.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–21907 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0188]

RIN 0579–AC37

Genetically Engineered Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for information.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is seeking public comment and scientific and technical empirical data and information concerning ongoing and future research on genetically engineered animals. APHIS' interest is to ensure that genetically engineered animals imported into the United States or moved interstate do not present risks to U.S. livestock health. We also seek comment on what types of actions and approaches APHIS should consider in addressing any such risks that would complement the Food and Drug Administration's (FDA's) oversight, described in draft guidance elsewhere in this issue of the **Federal Register**.

DATES: We will consider all comments that we receive on or before November 18, 2008.

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–2006–0188* 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. APHIS–2006–0188, 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. APHIS–2006–0188.

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: Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1236; 301–734–5720.

SUPPLEMENTARY INFORMATION:

Background

In 1986, the Office of Science and Technology Policy (OSTP) under the Executive Office of the President published a policy document known as the Coordinated Framework for the Regulation of Biotechnology (the Coordinated Framework).[1] This policy document describes the system for coordinating the activities of the Federal agencies responsible for regulating all GE organisms:[2] The Environmental Protection Agency (EPA), the U.S. Department of Health and Human Services' (HHS) Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA), specifically the Animal and Plant Health Inspection Service (APHIS). The foundation of the Coordinated Framework is that existing health and safety laws administered by these Federal agencies provide a sound network of agency authorities for the regulation of GE organisms and products.

Roles of APHIS and Other Agencies in the Regulation of GE Animals

USDA and FDA both have authorities relevant to the oversight of GE animals. FDA has authority over new animal drugs under the Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 321 *et seq.*). Elsewhere in the issue of the **Federal Register**, FDA is announcing the availability of draft guidance for public comment clarifying its oversight of GE animals under the new animal drug provisions of the FFDCA. The draft guidance explains that where a recombinant DNA construct in a GE animal is intended to affect the structure or function of the body of the GE animal, that construct is a new animal drug [3] regardless of the intended use of products that may be produced by the GE animal. The FFDCA requires that each new animal drug be approved through a new animal drug application (NADA) based on a demonstration that it is safe and effective for its intended use. FDA has been working with developers of GE animals for almost 20 years and the draft guidance is intended to clarify requirements and recommendations for producers and developers of GE animals and their products.

[1] Coordinated Framework for the Regulation of Biotechnology: June 26, 1986; 51 FR 23302; *http://usbiotechreg.nbii.gov/CoordinatedFrameworkForRegulationOfBiotechnology1986.pdf.*

[2] In addition to discussing the regulatory responsibilities of these agencies for GE organisms and other products, the Coordinated Framework also discusses the responsibilities of agencies with jurisdiction over GE research (the National Institutes of Health, the National Science Foundation, EPA, and USDA's Agricultural Research Service).

[3] In accordance with the definition of ''new animal drug'' in 21 U.S.C. 321(v).

The USDA has provided Federal leadership in protecting U.S. livestock health for more than 120 years. APHIS is authorized, under the Animal Health Protection Act (AHPA) (7 U.S.C. 8301 *et seq.*), to protect the health of U.S. livestock by preventing the introduction and spread of livestock diseases and pests into and within the United States. Based on that authority, APHIS may broadly consider the potential effects of animals with GE traits on the health of the overall U.S. livestock population, while FDA is more focused on the direct effects of genetic engineering on individual animals based on their authority under the FFDCA. Given these complementary authorities, APHIS and FDA have been discussing their respective roles in overseeing GE animals for some time. FDA's release for public comment of its draft guidance on GE animals provides an excellent opportunity for APHIS to solicit public comment on the potential effects of animals with GE traits on U.S. livestock health.

APHIS particularly seeks the following information:

1. What research on GE animals is currently being conducted or planned for the future?

2. What, if any, implications would activities such as the importation and interstate movement of such animals have for the health of the U.S. livestock population?

3. What, if any, activities should APHIS consider with respect to U.S. livestock health under the AHPA that would complement the requirements and recommendations described in FDA's draft guidance?

APHIS welcomes comments and scientific and technical information and data relevant to these issues. We will consider all comments and information we receive in determining the appropriate role for APHIS with regard to GE animals and will continue to collaborate closely with FDA.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.

Done in Washington, DC, this 16th day of September 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8–21977 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0032]

Codex Alimentarius Commission: 2nd Session of the Codex ad hoc Intergovernmental Task Force on Antimicrobial Resistance

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA) are sponsoring a public meeting on September 25, 2008, to discuss the agenda items coming before the 2nd session of the Codex *ad hoc* Intergovernmental Task Force on Antimicrobial Resistance (AMR) and to present draft U.S. positions on the agenda items. The 2nd session of the AMR will be held in Seoul, Korea, October 20–24, 2008. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to comment on the agenda items that will be discussed at this forthcoming session of AMR.

DATES: The public meeting is scheduled for Thursday, September 25, 2008, from 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held at FDA, 7519 Standish Place, Room 152, Rockville, MD.

Documents related to the 2nd session of the AMR will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

For Further Information About the 2nd Session of the AMR Contact: U.S. Delegate, Dr. David White, Director, National Antimicrobial Resistance Monitoring System (NARMS), FDA, Center for Veterinary Medicine, Office of Research, 8401 Muirkirk Rd., Laurel, MD 20798, *Phone:* (301) 210–4181, *E-mail: david.white@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Edith Kennard, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, *Phone:* (202) 720–5261, *Fax:* (202) 720–3157, *E-mail: edith.kennard@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex *ad hoc* Intergovernmental Task Force on AMR was established by the 29th Session of the Codex Alimentarius Commission in 2006 to develop science-based guidance to be used to assess the risks to human health associated with the presence in food and feed, including aquaculture, and the transmission through food and feed of antimicrobial resistant microorganisms and antimicrobial resistance genes. The AMR Task Force would also consider appropriate risk management options to reduce such risk. The Task Force is hosted by the Republic of Korea.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 2nd session of the AMR will be discussed during the public meeting:

- Matters Referred to the Committee from Other Codex Bodies
- Information on the Work by FAO, WHO, and the World Organization for Animal Health on Antimicrobial Resistance
- Proposed Draft Risk Assessment Guidance Regarding Foodborne Antimicrobial Resistant Microorganisms (Report of the Working Group)
- Proposed Draft Guidance on Creating Risk Profiles for Antimicrobial Resistant Foodborne Microorganisms for Setting Risk Assessment and Management Priorities (Report of the Working Group)
- Proposed Draft Risk Management Guidance to Contain Foodborne Antimicrobial Resistant Microorganisms (Report of the Working Group)

Each issue listed will be fully described in documents distributed, or to be distributed, by the Korean Secretariat to the meeting. Members of the public may access copies of these documents at *http://www.codexalimentarius.net/current.asp.*

Public Meeting

At the September 25, 2008, public meeting, draft U.S. positions on these agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S.

Delegate to the Task Force on AMR, Dr. David White, at *david.white@fda.hhs.gov.* Written comments should state that they relate to activities of the 2nd session of the Task Force on AMR.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and they have the option to password protect their accounts.

Done at Washington, DC, on September 16, 2008.

Karen Hulebak,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. E8–22080 Filed 9–17–08; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Day Use on Urban National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Day Use on the National Forests of Southern California.

DATES: Comments must be received in writing on or before November 18, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Deborah J. Chavez, Pacific Southwest Research Station, 4955 Canyon Crest Drive, Riverside, CA 92507. Comments may also be submitted via facsimile to 951–680–1501, or send an e-mail to *dchavez@fs.fed.us*.

The public may inspect comments received at the Pacific Southwest Research Station's Riverside Fire Lab at 4955 Canyon Crest Drive, Riverside, CA during normal business hours. Visitors are encouraged to call ahead to 951–680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Deborah J. Chavez, Pacific Southwest Research Station, 951–680–1558, e-mail to *dchavez@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Day Use on Urban Proximate National Forests.

OMB Number: 0596–0129.

Expiration Date of Approval: 07/31/2009.

Type of Request: Extension.

Abstract: The Forest Service is seeking to renew OMB approval to collect information from visitors at outdoor recreation day-use sites (developed picnic areas, general forest day-use sites, off-road staging areas, trails, etc.) on urban-proximate national forests land.

Users of urban-proximate national forests (national forests within 1 hour driving distance of 1 million or more people) come from a variety of ethnic/racial, income, age, educational, and other socio-demographic backgrounds. The activities pursued, information sources utilized, and site attributes preferred are just some of the items affected by these differences.

Past studies have provided baseline information, from which managers have made decisions, revised forest plans, and renovated/redesigned recreation sites. Additional information is necessary for the urban proximate national forest managers to validate previous results and maintain information regarding the continuously changing profile of the visitor population. Without this information, the Forest Service will be ill-equipped to implement changes in response to day use visitors' needs and preferences.

Sites, dates of data collection, and individuals participating in the study are selected randomly. Survey instruments are available in English and Spanish, and research teams are bilingual. Participation is voluntary and individuals provide responses to questions covering the following topics:

- Socio-demographics.
- National Forest visitation history and patterns.
- Activity patterns.
- Information and communication.
- Site amenities/characteristics.
- Perceptions about the environment and land uses.
- General comments.

The Agency has used previously collected data to create forest newspapers, add site renovations to existing picnic areas, and in forest planning. The Forest Service has presented previous survey results at local, national, and international meetings. The Agency has published collected data in various outlets. Future data collections under this OMB number will be utilized in a similar manner, as well as provide opportunities for comparisons of visitor profiles and use shifts over time.

Dr. Deborah J. Chavez, of the Pacific Southwest Research Station, will evaluate and analyze the collected data. Consequences of not collecting these data include, but are not limited to:

(a) Decreased service delivery due to decreased quality and breadth of information provided to resource managers regarding the socio-demographic profile of visitors, visitation history and patterns, information and communication, site amenities/characteristics, perceptions about the environment and land uses;

(b) Decreased ability to continue and expand approved research work unit's assigned study topics, such as understanding visitor profiles;

(c) Increased response time for inquiries into topics from managers and university contacts;

(d) Increased dependency on cooperator availability to carry out research unit mission; and

(e) Loss of information represented in follow-up longitudinal studies.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 600.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 150 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 12, 2008.

Ann M. Bartuska,

Deputy Chief for Research & Development.

[FR Doc. E8–21994 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee will meet in Salt Lake City, Utah. The purpose of the meeting is to discuss the proposed rule for the management of roadless areas on National Forest System lands in the State of Colorado and to discuss other related roadless area matters.

DATES: The meeting will be held October 9, 2008, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Utah State Capitol Building, Room C450, 350 N. State Street, Salt Lake City, UT. Written comments concerning this meeting should be addressed to Forest Service, U.S. Department of Agriculture, EMC, Jessica Call, 201 14th Street, SW., Mailstop 1104, Washington, DC 20024. Comments may also be sent via e-mail to *jessicacall@fs.fed.us*, or via facsimile to 202–205–1012. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service, Sidney R. Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1056 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jessica Call, Roadless Area Conservation National Advisory Committee (RACNAC) Coordinator, at *jessicacall@fs.fed.us* or 202–205–1056.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend. If you plan to attend, please provide your name to Jessica Call, RACNAC Coordinator, by October 6, 2008. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period. To offer oral comment, please contact the RACNAC Coordinator at 202–205–1056.

Dated: September 15, 2008.

Charles L. Myers,

Associate Deputy Chief, National Forest System.

[FR Doc. E8–21990 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan: Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands; Oklahoma, Texas, and New Mexico

AGENCY: Forest Service, USDA.

ACTION: Notice of Initiation to revise the Cibola National Forest and Grasslands Land and Resource Management Plan.

SUMMARY: The Forest Service is revising the Land and Resource Management Plan (hereafter referred to as Grasslands Plan) for the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands. This notice describes the documents available for review and how to obtain them; summarizes the need to change the Grasslands Plan; provides information concerning public participation and collaboration, including the process for submitting comments; provides an estimated schedule for the planning process, including the time available for comments; and includes the names and addresses of agency officials who can provide additional information.

DATES: Revision formally begins with publication of this notice in the **Federal Register**. Many public comments regarding Forest Plan revision have already been received at public meetings and through e-mail, phone calls, and letters. Additional comments on the Comprehensive Evaluation Report (CER) should be submitted by October 31, 2008.

ADDRESSES: Send written comments to: Sara Campney, Cibola National Forest, 2113 Osuna Rd., NE., Albuquerque, NM 87113.

Electronic mail address: comments-grasslandsplan@fs.fed.us.

Web site: http://www.fs.fed.us/r3/cibola/plan-revision/national_grasslands/index.shtml.

Comment form: http://www.fs.fed.us/r3/cibola/plan-revision/national_grasslands/contactus.shtml.

FOR FURTHER INFORMATION CONTACT: Cibola National Forest Planner assistant, Sara Campney phone (505) 346–3886 fax (505) 346–3901.

SUPPLEMENTARY INFORMATION:

Documents Available for Review: Three pre-revision documents are available for review on the Cibola National Forest Plan Revision Web site: The Socio-Economic Sustainability Report, the Ecological Sustainability Report, and the CER for the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands. In addition, the final version of the Canadian River Potential Wilderness Area Evaluation (the Evaluation) is also available on the Web site (see Web site address above). Public meetings and a comment period for the Evaluation were held from October 2007 to February 2008. There will be another opportunity to comment on the Evaluation during the 90-day comment period that will follow the publication of the Proposed Plan.

Need for Change: The Grasslands Plan revision needs to:

—Better address the unique, local conditions and historic natural processes of each of the Grassland's ecosystems.

—Include more adaptive management approaches for emerging vegetation issues, such as invasive plants, the effects of climate change, and managing wildland fire in a checkerboard land ownership pattern.
—Evaluate the at-risk species relationships to associated ecosystems on the Grasslands and determine the need for species-specific management direction.
—Identify management strategies that address the recreation opportunities and challenges on the Grasslands and that support the sustainability of local communities.
—Identify areas of high scenic quality and develop management objectives based on the distinguishing features of the Grassland's scenery.
—Use the Travel Analysis Process to assist in developing the long-term goals and objectives that will guide future road designation and maintenance on the Grasslands for administrative and public purposes.
—Evaluate the suitability of the Canadian River Potential Wilderness Area (Mills Canyon) for a Wilderness designation and provide direction that protects the unique features of this area.
—Address the unique management considerations for existing special areas, including eligible Scenic Rivers, Historic Trails and Scenic Byways.
—Address the future impacts and suitability of renewable energy production on and around the Grasslands, particularly wind energy development.
—Provide management direction for oil and gas operations from the drilling and construction phase through site rehabilitation.

Public Participation and Opportunity To Comment

The public is invited to submit comments on the Comprehensive Evaluation Report to the address or electronic mail address listed in the beginning of this announcement. Comments should be submitted by October 31, 2008. Public meetings on the Draft Plan have not yet been scheduled. Only those parties who participate in the planning process through the submission of written comments can submit an objection later in the proposed plan development process pursuant to 36 CFR 219.13(a). Comments received during the planning process, including names and addresses of those who commented, will be part of the public record available for public inspection. The Responsible Official shall accept and consider comments submitted anonymously.

Estimated Schedule

September 2008 to March 2009—Prepare Proposed Plan.
April 2009—Begin collaboration with the public to refine the Proposed Plan.
October 2009—Complete Proposed Plan and begin the formal 90-day comment period.
February 2010—30-day pre-decisional Objection Period.
March 2010—Responsible Official signs Plan Approval Document.

Responsible Official

The Forest Supervisor, Nancy Rose, is the Responsible Official (36 CFR 219.2(b)(1)).

Authority: 36 CFR 219.9(b)(2)(i), 73 FR 21509, April 21, 2008.

Dated: September 12, 2008.

Nancy Rose,

Forest Supervisor.

[FR Doc. E8–22001 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) this notice announces the Risk Management Agency's intention to request an extension for and revision to a currently approved information collection for Risk Management and Crop Insurance Education; Request for Applications.

DATES: Comments on this notice will be accepted until close of business November 18, 2008.

Additional Information or Comments: Contact Lon Burke, Risk Management Education Division, USDA/RMA, 1400 Independence Avenue, SW., Stop 0808, Washington, DC 20250–0808, telephone (202) 720–5265. Comments may also be submitted electronically to: *RMA.Risk-Ed@rma.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Risk Management and Crop Insurance Education; Request for Applications.

OMB Number: 0563–0067.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Federal Crop Insurance Act directs the Federal Crop Insurance Corporation, operating through RMA, to (a) establish crop insurance education and information programs in States that have been historically underserved by the Federal crop insurance program [7 U.S.C. 1524(a)(2)]; and (b) provide agricultural producers with training opportunities in risk management, with a priority given to producers of specialty crops and underserved commodities [7 U.S.C. 1522(d)(3)(F)]. With this submission, RMA seeks to obtain OMB's approval for an information collection project that will assist RMA in operating and evaluating these programs. The information collection project is a Request for Applications. The primary objective of the information collection projects is to enable RMA to better evaluate the performance capacity and plans of organizations that are applying for funds for cooperative and partnership agreements for risk management education programs and crop insurance education programs.

Estimate of burden: The public reporting burden for this collection of information is estimated to average: 15 hours, 45 minutes per response for the Commodity Partnerships Program and Targeted States Program for agribusiness professionals, and 4 hours, 45 minutes per response for the Commodity Partnerships Small Sessions Program for a total of 2,255 hours.

Respondents/Affected Entities: Agribusiness professionals.

Estimated annual number of respondents: 220 respondents.

Estimated annual number of responses: 220 responses or 1 per respondent.

Estimated total annual burden on respondents: 523 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g., permitting electronic submission of responses. Comments may be sent to Lon Burke, Risk Management Education Division, USDA/RMA, 1400 Independence Avenue, SW., Stop 0808, Washington, DC 20250–0808. All comments will be available for public inspection during

regular business hours at the same address.

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

Signed in Washington, DC, on September 15, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–21936 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35) this notice announces the Risk Management Agency's intention to request an extension for and revision to a currently approved information collection for Request for Applications for Research Partnerships.

DATES: Comments on this notice will be accepted until close of business, November 18, 2008.

Additional Information or Comments: Contact Virginia Guzman, United States Department of Agriculture (USDA), Research and Evaluation Division, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133, telephone (816) 926–6343. Comments may also be submitted electronically to: *RMARED_PRA@rm.fcic.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Research and Development, Request for Applications.

OMB Number: 0563–0065.

Type of Request: Extension of a currently approved information collection.

Abstract: The Risk Management Agency intends to seek information in order to fulfill its mission to fund the development of non-insurance risk management tools that will be utilized by agricultural producers to assist them in mitigating the risks inherent in agricultural production and to improve the economic stability of agriculture through the maintenance and development of risk management tools. The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. The Risk Management Agency proposes to publish Requests for Applications (RFA) to announce the availability of funds and solicit proposals requesting funding for the development of risk management tools. The information collections will be limited to the request for applications and status reports. Information collections are necessary to evaluate proposals and award funds based on a competitive process and to obtain the information necessary for the development of partnership agreements and to obtain information on the status of research agreements and projects.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 2,400 minutes per response for a total burden of 6,000 hours.

Respondents/Affected Entities: Applications for funding are invited from qualified public and private entities. Eligible applicants include colleges and universities, Federal, State, and local agencies, Native American tribal organizations, non-profit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants.

Estimated annual number of respondents: 150.

Estimated annual number of responses: 150.

Estimated total annual burden on respondents: 6,000.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g. permitting electronic submission of responses. Comments may be sent to Virginia Guzman, United States Department of Agriculture (USDA), Research and Evaluation Division, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. All comments will be available for public inspection during regular business hours at the same address.

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

Signed in Washington, DC, on September 15, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–21939 Filed 9–18–08; 8:45 am]

BILLING CODE 3410–08–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* October 19, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or *e-mail CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: On July 25, 2008, and August 1, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (73 FR 43404 and 44961) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small

entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product:

Target, Silhouette

NSN: 6920–00–795–1807.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.
Coverage: C-List for the government requirement of the Defense Supply Center Philadelphia, Philadelphia, PA.

Services:

Service Type/Location: Janitorial Services, San Francisco Maritime Museum Building, 900 Beach Street, San Francisco, CA.
San Francisco Hyde Street Pier, 2905 Hyde Street, San Francisco, CA.
San Francisco Maritime Visitor Center, 499 Jefferson Street, San Francisco, CA.
NPA: Toolworks, Inc., San Francisco, CA.
Contracting Activity: U.S. Department of the Interior, National Park Service, Oakland, CA.

Service Type/Location: Custodial Services—Forest Service—Rapid River, USDA Forest Service-District Office, 8181 Highway 2, Rapid River, MI.
NPA: Lakestate Industries, Escanaba, MI.
Contracting Activity: Department of Agriculture, Hiawatha National Forest, Escamba, MI.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–21951 Filed 9–18–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such an agency.

Comments Must Be Received on or Before: October 19, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or *e-mail: CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for delivery by the nonprofit agency listed:

Services

Service Type/Location: Materials Coordinator/Supplies Technician, Warehouse located at Federal Highway Administration Bldg., 610 East Fifth St., Vancouver, WA.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: Dept of Transportation, Federal Highway Administration, Vancouver, WA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Products

Tray, Repositional Note Pad
NSN: 7520–01–166–0878—Tray, Repositional Note Pad.
NPA: L.C. Industries For The Blind, Inc., Durham, NC.
Contracting Activity: GSA/FSS Ofc. Sup. Ctr.—Paper Products, New York, NY.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–21950 Filed 9–18–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Notice of Amended Final Results Pursuant to Final Court Decision

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

SUMMARY: On May 29, 2008, the Court of International Trade (''CIT'') affirmed the Department's remand determination and entered judgment in *Wuhan Bee Healthy Co., Ltd., and Presstek Inc., v.*

United States, Court No. 05–00438, Slip Op. 08–61 (Ct. Int'l Trade) (May 29, 2008) (''*Wuhan v. U.S.*''), which challenged certain aspects of the Department of Commerce's (''the Department'') findings in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005) (''*Final Results*'') and the accompanying Issues and Decision Memorandum. As explained below, in accordance with the order contained in the CIT's May 29, 2008, *Wuhan v. U.S.*, the Department is amending the *Final Results* of the review to apply the recalculated surrogate value for labor in the Department's normal value calculation.

EFFECTIVE DATE: September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Bobby Wong or Scot T. Fullerton, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Room 4003, Washington, DC 20230; telephone: (202) 482–0409 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2005, the Department completed its *Final Results* of the second administrative review of honey from the People's Republic of China (''PRC''). On July 20, 2007, the CIT issued its order remanding the case to the Department, requesting that the Department explain its decisions, (1) to include data from high–wage countries in its non–market economy (''NME'') wage rate calculation, and (2) to exclude from that calculation data from twenty–two low–wage countries placed on the record by plaintiffs. *See Wuhan Bee Healthy Co., Ltd. v. United States*, 2007 Ct. Int'l. Trade, LEXIS 115, Slip Op. 07–113 (''*Wuhan Remand*''). Additionally, the Department requested a voluntary remand to recalculate the PRC wage rate using the data set out in its remand request. The CIT also directed the Department to reopen the record to provide parties an opportunity to submit comments regarding the Department's application of *ad valorem* versus per unit assessment rates. *See Wuhan Remand*, 2007 Ct. Int'l Trade, LEXIS 115, Slip Op. 07–113 at *63.

On August 3, 2007, the Department reopened the administrative record to allow parties an opportunity to comment on the Department's proposed change in methodology from an *ad valorem* to a per-unit duty assessment. Petitioners filed comments in support of the Department's proposed change. Respondents did not provide comments. On September 7, 2007, the Department released its draft remand results to interested parties for comments. Again, respondents did not provide comments.

On October 16, 2007, the Department submitted the final *Remand Results* to the CIT. On May 29, 2008, the CIT issued its ruling and sustained the Department's remand results. *See Wuhan v. U.S.*, Court No. 05–00438, Slip Op. 08–61, at 2. The CIT found that the Department provided a reasonable explanation and conducted a reasonable analysis, concerning the inclusion and exclusion of specific countries in the regression analysis, sufficient to address the court's concerns. Furthermore, the CIT found that, with respect to the voluntary remand, the Department explained its methodology reasonably, and thus sustained the Department's recalculation of the surrogate labor rate. No appeals were filed with the United States Court of Appeals for the Federal Circuit (''CAFC'').

Amendment to the Final Determination

Because there is now a final and conclusive court decision, effective as of the publication date of this notice, we are amending the *Final Results* and revising the weighted average dumping margins for Wuhan Bee Healthy Co., Ltd. (''Wuhan Bee''):

HONEY FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Wuhan Bee	101.48

We have calculated Wuhan Bee's company-specific antidumping margin as 101.48 percent. *See* the Memorandum to the File from Bobby Wong, ''Analysis Memorandum for the Draft Results of the Redetermination of the Wage Rate Remand for Antidumping Duty Administrative Review of Honey from the People's Republic of China for Wuhan Bee Healthy Co., Ltd.,'' dated September 6, 2007 (''Draft Results Analysis Memo''). There have been no changes to this analysis for these amended final results. In accordance with the Department's practice of applying importer–specific assessment rates, we will instruct United States Customs and Border Protection (''CBP'') to apply the importer-specific assessment rate for Wuhan Bee's exports to the United States. *See* Draft Results Analysis Memo at Attachment 2. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of the final results of this review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: September 8, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–21979 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of citric acid and certain citrate salts from the People's Republic of China. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Damian Felton, David Neubacher, or Shelly Atkinson, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0133, (202) 482–5823, or (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department of Commerce's (''Department'') notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts From the People's Republic of China*, 73 FR 26960 (May 12, 2008) (''*Initiation Notice*''), and the accompanying Initiation Checklist.

On June 2, 2008, the Department selected three Chinese producers/exporters of citric acid and certain citrate salts (''citric acid'') as mandatory respondents, BBCA Group Corp., Shandong TTCA Biochemical Co., Ltd.

(''TTCA''), and Yixing Union Biochemical Co., Ltd. (''Yixing Union''). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Respondent Selection'' (June 2, 2008). This memorandum is on file in the Department's Central Records Unit in Room 1117 of the main Department building (''CRU''). Subsequently, on June 4, 2008, the Department issued a correction to the respondent selection memorandum, naming Anhui BBCA Biochemical Co., Ltd. (''Anhui BBCA'') as a mandatory respondent, and not BBCA Group Corp. *See* Memorandum to the File from Scott Holland, ''Correction to Respondent Selection Memorandum—Selection of Anhui BBCA Biochemical Co., Ltd.'' (June 4, 2008). On June 9, 2008, we issued the countervailing duty (''CVD'') questionnaires (''CVD questionnaire'') to the Government of the People's Republic of China (''GOC''), Anhui BBCA, TTCA, and Yixing Union.

On June 11, 2008, the International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of citric acid from Canada and the People's Republic of China (''PRC''). *See Citric Acid and Certain Citrate Salts from Canada and China; Determinations*, Investigation Nos. 701–TA–456 and 731–TA–1151–1152, 73 FR 33115 (June 11, 2008).

On June 13, 2008, the Department postponed the preliminary determination of this investigation until September 12, 2008. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 33805 (June 13, 2008).

On July 16, 2008, we were notified by counsel for Anhui BBCA that the company would not be participating in the investigation.

We received responses to our questionnaire from the GOC, TTCA and Yixing Union on July 23, 2008. *See* the GOC's Original Questionnaire Response (July 23, 2008) (''GQR''); TTCA's Original Questionnaire Response (July 23, 2008) (''TQR''); and Yixing Union's Original Questionnaire Response (July 23, 2008) (''YQR''). We sent supplemental questionnaires on the following dates: August 1, 2008 (TTCA and Yixing Union); August 7, 2008 (TTCA); August 11, 2008 (Yixing Union); August 13 and 18, 2008 (GOC); and September 4, 2008 (GOC). We received responses to these supplemental questionnaires as follows: TTCA's First Supplemental Response (August 6, 2008) (''T1SR''); TTCA's Second Supplemental Response (August 27, 2008) (''T2SR (8/27)''); TTCA's Second Supplemental Response (August 28, 2008); Yixing Union's First Supplemental Response (August 7, 2008); Yixing Union's Second Supplemental Response (September 2, 2008) (''Y2SR''); GOC's First Supplemental Response (August 27, 2007) (''G1SR (8/27)''); GOC's First Supplemental Response (September 2, 2008) (''G1SR (9/2)''); GOC's Second Supplemental Response (September 2, 2008) (''G2SR (9/2)''); GOC's Second Supplemental Response (September 5, 2008) (''G2SR (9/5)''); GOC's Third Supplemental Response (September 9, 2008); and TTCA's Additional Translations of T1SR (8/27) (September 10, 2008).

On August 1, 2008, Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle America, Inc. (collectively, ''Petitioners'') requested that the Department extend the deadline for the submission of new subsidy allegations beyond the August 4, 2008, deadline established by the Department's regulations. *See* 19 CFR 351.301(d)(4)(i)(A). The Department granted the request and Petitioners submitted new subsidy allegations on August 8, 2008. The GOC and Yixing Union submitted comments on Petitioners' new subsidy allegations on August 18, 2008. We met with the GOC and Petitioners regarding the new subsidy allegations on August 22, 2008, and August 28, 2008, respectively.

On September 12, 2008, the Department determined to investigate certain of the newly alleged subsidies, specifically those relating to the Provision of TTCA's Plant and Equipment for Less Than Adequate Remuneration (''LTAR''); Provision of Land to SOEs for LTAR; Provision of Land in the YEDZ for LTAR; Provision of Land-use Fees in Jiangsu Province for LTAR; Provision of Land in the Anqiu City Economic Development Zone for LTAR; Administration Fee Exemption in Anqiu City; Exemption of Water and Sewage Fees in Anqiu City; Tax Grants, Rebates and Credits in the Yixing Economic Development Zone (''YEDZ''); Provision of Water in the YEDZ for LTAR; Provision of Electricity in the YEDZ for LTAR; Provision of Construction Services in the YEDZ for LTAR; Administration Fee Exemption in the YEDZ; and Grants to FIEs for Projects in the YEDZ. *See* Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, ''New Subsidy Allegations'' (September 12, 2008). Questions regarding these newly alleged subsidies will be sent to the GOC and the respondent companies after this preliminary determination is issued.

On September 2, 2008, Petitioners requested that the final determination of this CVD investigation be aligned with the final determination in the companion antidumping duty (''AD'') investigation in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the ''Act'').

The GOC filed comments in advance of the preliminary determination on September 3, 2008 (''GOC Pre-Prelim Comments''). Petitioners provided comments on September 10, 2008, regarding certain issues in the GOC Pre-Prelim Comments.

On September 5, 2008, Petitioners submitted comments regarding the rate to be assigned to BBCA and the all-others rate (''Petitioners Comments on Anhui BBCA and the All-Others Rate''). The GOC responded to Petitioners' comments on September 9, 2008 (''GOC's Response to Petitioners'' Comments on Anhui BBCA and the All-Others Rate''). We address Petitioners' comments and the GOC's response below.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice*, 72 FR at 62210.

Timely comments were filed concerning the scope of the AD and CVD investigations of citric acid from Canada and the PRC on May 23, 2008, by Chemrom Inc., and by L. Perrigo Company on June 3, 2008. Petitioners responded to these comments on June 16, 2008.

On August 6, 2008, the Department issued a memorandum to the file regarding Petitioners' proposed amendments to the scope of the investigations. In response, on August 11, 2008, L. Perrigo Company and Petitioners' submitted comments to provide clarification of the term ''unrefined'' calcium citrate. We have analyzed the comments of the interested parties regarding the scope of this investigation. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, re: Antidumping Duty Investigation of

Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China (PRC), and CVD Investigation of Citric Acid and Certain Citrates Salts from the PRC, ''Whether to Amend the Scope of these Investigations to Exclude Monosodium Citrate and to Further Define the Product Referred to as 'Unrefined Calcium Citrate''' (September 10, 2008). Our position on these comments is reflected in the ''Scope of the Investigation'' section below.

Scope of the Investigation

The scope of this investigation includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this investigation also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this investigation does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this investigation includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On May 12, 2008, the Department initiated the CVD and AD investigations of citric acid from Canada and the PRC. *See Initiation Notice* and *Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 27492 (May 13, 2008). The CVD investigation and the AD investigations have the same scope with regard to the merchandise covered.

On September 2, 2008, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigations of citric acid from Canada and the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigations of citric acid from Canada and the PRC. Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than January 26, 2009, unless postponed.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (''POI''), is January 1, 2007, through December 31, 2007.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (''*CFS from the PRC*''), and the accompanying Issues and Decision Memorandum (''CFS Decision Memorandum''). In *CFS from the PRC*, the Department found that given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the PRC.

See CFS Decision Memorandum, at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See*, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (''*CWP from the PRC*''), and the accompanying Issues and Decision Memorandum (''CWP Decision Memorandum'').

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* CWP Decision Memorandum, at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Anhui BBCA

In the instant investigation, Anhui BBCA did not provide the requested information that is necessary to determine a CVD rate for this preliminary determination. Specifically, Anhui BBCA did not respond to the Department's June 9, 2008, CVD questionnaire. On July 16, 2008, we were notified that Anhui BBCA would not participate in the investigation. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for Anhui BBCA on facts otherwise available.

Petitioners argue that we should utilize reliable record evidence to compute a ''non-adverse facts available'' rate for Anhui BBCA, rather than follow the adverse facts available (''AFA'') methodology/approach the Department

developed in recent cases. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 5. Petitioners use record evidence to compute rates for: Certain grants, preferential policy loans, long-term loans provided to uncreditworthy companies, over rebate of VAT and the provision of land for LTAR. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 7–15.

Alternatively, should the Department calculate a total AFA rate for Anhui BBCA, Petitioners argue that we should not limit the computation to the rates of programs used by the cooperating respondents or from past cases. Petitioners believe that for certain programs, the rates calculated using publicly available information form a better source for facts available than does the information submitted by the cooperating respondents. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 16.

While the GOC agrees with Petitioners that the Department should use neutral (non-adverse) facts available whenever possible, the GOC notes that Petitioners' calculations for the aforementioned subsidy programs rely on highly adverse inferences to compute a supposed non-adverse rate. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 5 and 6.

For the preliminary determination, we are not computing a ''non-adverse facts available'' rate for Anhui BBCA. Instead, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial questionnaire, Anhui BBCA did not cooperate to the best of its ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that Anhui BBCA will not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and the accompanying Issues and Decision Memorandum, at ''Analysis of Programs'' and Comment 1.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994), at page 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

For the preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for Anhui BBCA generally using program-specific rates determined for the cooperating respondents or past cases. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in this investigation if the responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non-*de minimis* rate calculated for the same or similar program in another China CVD investigation. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed, which could conceivably be used by Anhui BBCA. *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 39657, 39661 (July 10, 2008).

Also, as explained in *Lawn Groomers from the PRC*, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies. *See Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 73 FR 42324 (July 21, 2008) (''*Lawn Groomers from the PRC*''), and the accompanying Initiation Checklist. In this investigation, the GOC has provided the business licenses of Anhui BBCA and its parent company, which indicate that these companies are located only in Anhui Province. *See* G2SR (9/2), at Exhibit S2–36. Therefore, we are including the Anhui Province programs in the calculation of Anhui BBCA's rate, but not the other sub-national subsidy programs. In addition, information supplied by Petitioners indicates that all of Anhui BBCA's cross-owned affiliates are either located in Anhui Province or outside the PRC. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at Exhibit 2, page 26. Therefore, we do not reach the issue of attributing subsidies received by these cross-owned affiliates for sub-national subsidy programs, pursuant to 19 CFR 351.525(b)(6)(ii).

For the following ten alleged income tax programs pertaining to either the reduction of the income tax rates or exemption from income tax, we have applied an adverse inference that Anhui BBCA paid no income tax during the POI: (1) ''Two Free, Three Half'' program, (2) Reduced income tax rates for foreign-investment enterprises based on location, (3) Income tax exemption program for export-oriented foreign-investment enterprises, (4) Reduced income tax rate for high or new technology enterprises, (5) Reduced income tax rate for technology or knowledge intensive foreign-investment enterprises, (6) Preferential income tax rate for research and development at foreign-investment enterprises, (7) Preferential tax programs for encouraged industries, (8) Preferential tax policies for township enterprises, (9) Local income tax exemption and reduction program for productive foreign-investment enterprises, and (10)

Reduced income tax rates for encouraged industries in Anhui Province. The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these ten income tax rate programs is 33 percent and we are assigning that rate to these ten programs.

This 33 percent AFA rate does not apply to income tax credit or refund programs. For the ''Income Tax Credits on Purchases of Domestically Produced Equipment,'' program, we have preliminarily determined to use Yixing Union's rate from this investigation, which is 0.11 percent. Neither respondent used the ''Tax benefits to foreign-investment enterprises for certain reinvestment of profits,'' program and the Department has not calculated a rate for this program in any prior investigation. Therefore, we have preliminarily determined to use the highest non-*de minimis* rate for any indirect tax program from a China CVD investigation because there were only *de minimis* rates for income tax credit or refund programs from prior investigations. The rate we selected is 1.51 percent, respondent GE's rate for the ''Value added tax on Tariff Exemptions on Imported Equipment,'' program. *See CFS from the PRC* and CFS Decision Memorandum, at pages 13–14.

For indirect tax and import tariff programs, we have preliminarily determined to use TTCA's rate from this investigation for the ''Value Added Tax Rebate for Purchases by Foreign-Investment Enterprises of Domestically Produced Equipment,'' program (0.23 percent) and Yixing Union's rate for ''Value Added Tax and Duty Exemptions on Imported Equipment,'' program, (0.69 percent).

For loan programs, we have preliminarily determined to use TTCA's rates from this investigation for the following programs: ''National-Government Policy Loan Program,'' (0.01 percent); and ''Other Policy Bank Loans,'' (0.48 percent). Neither respondent used the following programs: ''Discounted Loans for Export-Oriented Industries,'' and ''Funds Provided for the Rationalization of the Citric Acid Industry,'' and the Department has not calculated rates for any of these programs in prior investigations. Therefore, for these two programs, we have preliminarily determined to use the highest non-*de minimis* rate for any loan program from a China CVD investigation, which is 4.11 percent, respondent GE's rate for the ''Government Policy Lending'' program. *See CFS from the PRC* and CFS Decision Memorandum, at page 9–10.

For grant programs, we have preliminarily determined to use Yixing Union's rate from this investigation for the ''Famous Brands'' program (0.03 percent *ad valorem*). Neither respondent used the following programs: ''State Key Technology Program Fund,'' ''National level grants to loss-making state-owned enterprises,'' and ''Provincial level grants to loss-making state-owned enterprises,'' and the Department has not calculated rates for any of these programs in prior investigations. Moreover, all previously calculated rates for grant programs have been *de minimis*. Therefore, for each of these programs, we have preliminarily determined to use the highest calculated subsidy rate for any program otherwise listed, which could conceivably have been used by Anhui BBCA. The rate was 13.36 percent for the ''Government Provision of Land for Less Than Adequate Remuneration,'' program from *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (''*LWS from the PRC*'') and the accompanying Issues and Decision Memorandum, at 14–18.

Finally, for the ''Provision of Land for Less than Adequate Remuneration in Anhui Province'' program, we have preliminarily determined to use the highest non-*de minimis* rate for the provision of land from prior determinations (13.36 percent from *LWS from the PRC*).

For further explanation of the derivation of Anhui BBCA's AFA rate, see the Memorandum to the File, ''Adverse Facts Available Rate for Anhui BBCA Biochemical Co., Ltd'' (September 12, 2008) (''Anhui BBCA AFA Calc Memo'').

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See e.g.*, SAA, at page 870. The Department considers information to be corroborated if it has probative value. *See id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA, at page 869.

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning these programs due to Anhui BBCA's decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from which Anhui BBCA could conceivably receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which Anhui BBCA could actually receive a benefit. Due to the lack of participation by Anhui BBCA and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

On this basis, we preliminarily determine that the AFA countervailable subsidy rate for Anhui BBCA is 97.72 percent *ad valorem*. *See* Anhui BBCA AFA Calc Memo.

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding as described in 19 CFR 351.524(d)(2) is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL. *See Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607 (August 6, 2007) (unchanged in final). No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company. The Court of International Trade (''CIT'') has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States*, 166 F. Supp. 2d. 593, 604 (CIT 2001).

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

TTCA

TTCA provided a questionnaire response on behalf of itself and one affiliate (''affiliate A''). *See* TQR. The names and details of TTCA's exact relationship with its affiliates are proprietary and, hence, addressed separately. *See* Preliminary Determination Calculation Memorandum for TTCA Co., Ltd., at page 2 (September 12, 2008) (''TTCA Preliminary Calc Memo''). TTCA reported that none of its affiliates produces subject merchandise, supplies any inputs to TTCA, or received and transferred subsidies to TTCA. *See* TQR, at page 4. Based on the questionnaire response for affiliate A, we preliminarily determine that this company has not received any subsidies. Thus, we are preliminarily excluding affiliate A from the subsidy calculation.

After reviewing TTCA's relationship with its reported affiliates (*i.e.*, comparing the list of common shareholders for the reported affiliates), we requested that TTCA provide a complete questionnaire response for an additional affiliate (''affiliate B''). We received affiliate B's questionnaire response shortly before the deadline for this preliminary determination, and have not been able to fully analyze the response or affiliate B's relationship with TTCA. *See* T2SR (8/27), at Exhibit 8. Consequently, for this preliminary determination, we are limiting our investigation to subsidies received by TTCA, but will continue to examine this issue for the final determination.

Yixing Union

Yixing Union responded to the Department's questionnaire by providing information on the subsidies it received. In its response, Yixing Union identified Yixing Union Cogeneration Co., Ltd. (''Cogeneration'') as its parent and a supplier of energy. Based on this information, we requested, and Yixing Union provided, a questionnaire response on behalf of Cogeneration.

We preliminarily determine that Yixing Union and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). We further preliminarily determine that the energy supplied by Cogeneration to Yixing Union is not primarily dedicated to the downstream product and, consequently, that any subsidies received by Cogeneration should not be attributed to Yixing Union under 19 CFR 351.525(b)(6)(iv). Instead, because Cogeneration is the parent of Yixing Union, we are attributing the subsidies received by Cogeneration to Yixing Union pursuant to 19 CFR 351.525(b)(6)(iii).

To calculate the benefit to Yixing Union from subsidies given to Cogeneration, we would normally use the consolidated sales of Cogeneration and its subsidiaries, pursuant to 19 CFR 351.525(b)(6)(iii). However, we do not have consolidated sales information for Cogeneration on the record. Consequently, for the purposes of the preliminary determination, we generally used the total sales of Yixing Union and the total sales of Cogeneration less sales between the two companies. For 2005, we did not have the amount of sales between Yixing Union and Cogeneration. Therefore, we subtracted the 2006 amount for sales between these two companies to arrive at the 2005 ''consolidated'' sales. *See* Preliminary Determination Calculation Memorandum for Yixing Union Biochemical Co., Ltd. (September 12, 2008) (''Yixing Union Preliminary Calc Memo''). We intend to seek consolidated sales information for Cogeneration for the final determination.

Yixing Union also identified several other affiliated companies. However, Yixing Union reported that these affiliates do not produce the subject merchandise and do not provide inputs to Yixing Union. Therefore, because these companies do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)–(v), we do not reach the issue of whether these companies and Yixing Union are cross-owned within the meaning of 19 CFR 351.525(b)(6)(iii)–(vi), and we are not including these companies in our subsidy calculations.

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loans

The Department is investigating loans received by respondents from policy banks and state-owned commercial banks (''SOCBs''), which are alleged to have been granted on a preferential, non-commercial basis. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking

purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii).

The Department has previously determined that loan benchmarks must be market-based and that Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector. Specifically, the Department found that the GOC's predominant role in the banking sector results in significant distortions that render lending rates in the PRC unsuitable as benchmarks. This determination led us to rely on an external benchmark. *See e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (''*Tires from the PRC*''), and the accompanying Issues and Decision Memorandum, at page 7 (''Tires Decision Memorandum'').

The GOC disputes the Department's prior findings and, in this investigation, has argued that the Department should rely on the Shanghai Inter-bank Offered Rate (''SHIBOR'') as its benchmark. This rate was officially introduced in January 2007. According to the GOC, it is an average of quotations submitted by 16 commercial banks and, according to the GOC, these rates reflect the demand for and supply of funds on the money market for maturities of up to one year. *See* GQR, at pages 23–27. The GOC contends that this rate is more suitable than the external benchmark the Department has relied upon to-date because: (i) It is an in-country benchmark; (ii) the rate is unrelated to the allocation of credit and preferential rates to specific borrowers; (iii) the rate is a truly market-determined rate for unsecured funds among banks operating in the Shanghai wholesale money market; and (iv) the rate is determined in part by foreign-owned banks.

We have not adopted the SHIBOR as the benchmark for this preliminary determination. We disagree that it is a market-determined rate because the banks whose rates form the SHIBOR are subject to a deposit rate cap and lending rate floor. These aspects of the banking system, *inter alia*, led us to conclude in *CFS from the PRC* that ''the way interest rate formation is regulated in China both distorts lending rates and provides explicit recognition that banks in China are not yet fully able to set interest rates on a market basis.'' *See* CFS Decision Memorandum, at Comment 10. We also found in *CFS from the PRC* that foreign banks account for a very small share of credit in the PRC, operating mainly in niche markets, and, therefore, did not offer a suitable benchmark. *See id.*

Therefore, we are calculating an external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *Tires from the PRC*. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (''GNIs'') similar to that of the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed distortions in the banking sector discussed above.

As explained in the CFS Decision Memorandum, at Comment 10, to derive this rate we determine which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. *See* TTCA Preliminary Calc Memo, at page 3.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's International Financial Statistics (''IFS''). The GOC contends that although the Department has characterized them as such, many of the reported lending rates are not short-term rates. *See* GOC Pre-Prelim Comments, at pages 26–28. We have reviewed the information submitted by the GOC and agree that certain of the interest rates used in our regression analysis may reflect maturities of longer than one-year. Indeed, as the GOC points out, the head notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. GOC's Pre-Preliminary Comments, at Exhibit B (International Monetary Fund, International Financial Statistics Yearbook 2007, at xix). Therefore, we believe that these rates should not be treated as exclusively short-term in nature. *See* 19 CFR 351.102 (where ''short-term loan'' is defined as having repayment terms of one-year or less).

To address this concern, we will continue to use the same interest rate data and regression-based benchmark rate (after deleting deposit rate data reported by Jordan and U.S. dollar-denominated interest rates reported by Timor L'este), but will apply it to loans with terms of two years or less. We invite interested parties to comment on what might be a more appropriate cut-off for short- and medium-term loans, in view of several factors. First, there are no data available on the term structure of the loans underlying the IMF interest rate data. Second, we could not find a definition of ''medium-term'' to which countries reporting interest rate data to the IMF must adhere. And third, from a review of the 2008 IFS country notes and EIU Country Finance country reports, it appears that a majority of the countries in the basket either report loans with terms of one year or less or have loan markets where short-term lending predominates. *See* GOC Pre-Prelim Comments, at Attachment B; *see also*, Memorandum to the File, ''Additional Lending Benchmark Memo'' (September 12, 2008) (''Additional Lending Benchmark Memo'').

With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''low middle income'' by the World Bank. *See* TTCA Preliminary Calc Memo, at page 3. We did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine (for Ukraine only, prior to 2007). The benchmark necessarily also excludes any country that did not report both lending and inflation rates to IFS for those years. Third, the rate reported to the IMF by Jordan is based on deposit borrowings, rather than lending rates and the rate reported by Timore L'este is based on the U.S. dollar. *See* GOC Pre-Prelim Comments, at Attachment B; *see also*, Additional Lending Benchmark Memo. Therefore, both countries' rates have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have excluded any aberrational country for the year in question. *See* TTCA Preliminary Calc Memo, at page 4; *see also*, Yixing Union Preliminary Calc Memo, at page 4.

The resulting inflation-adjusted benchmark lending rates are provided in Yixing Union's and TTCA's preliminary calculation memoranda. *See* TTCA Preliminary Calc Memo, at 4; *see also*, Yixing Union Preliminary Calc Memo, at page 5. Because these are inflation-adjusted benchmarks, it is necessary to adjust respondents' interest payments and discount rates for inflation. This was done using the PRC inflation figure as reported in IFS. *See* TTCA Preliminary Calc Memo, at 4; *see also*,

Yixing Union Preliminary Calc Memo, at page 4.

In the GOC Pre-Preliminary Comments, the GOC argues that the regression used by the Department to compute this benchmark is flawed because there is no correlation between governance indicators and interest rates. We addressed these concerns in the LWRP Decision Memorandum, at Comment 12, which we hereby incorporate by reference. *See Light-walled Rectangular Tube and Pipe from the PRC: Final Affirmative Countervailing Duty Determination*, 73 FR 35642 (June 24, 2008) (''*LWRP from the PRC*''), and the accompanying Issues and Decision Memorandum (''LWRP Decision Memorandum'').

Benchmarks for Long-Term Loans

The lending rates reported in IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See e.g.*, LWRP Decision Memorandum, at page 8.

In its pre-preliminary comments, the GOC argues that the Department should not base its adjustment on BB-grade bonds because doing so is inconsistent with the Department's own regulations, which identify creditworthy companies as those having ratings of Aaa to Baa. If the Department were to use data on U.S. borrowers rated Aaa to Baa, the adjustment to convert to long-term rates would be downward, according to the GOC.

We have not adopted the GOC's position with respect to this issue. The regulations at 19 CFR 351.505(a)(3)(iii) specify a formula for the interest rate benchmark, i_b, for uncreditworthy companies. The regulations essentially direct the Department to derive i_b by equating returns on loans to companies in the Aaa to Baa and Caa to C ranges on a risk-adjusted basis. The fact that 19 CFR 351.505(a)(3)(iii) relies on interest rates and default rates for companies in the Aaa to Baa range to calculate i_b does not in any way imply that the long-term interest rate benchmark under 351.505(a)(3)(i) or (ii) must be based on interest rates charged to companies in the Aaa to Baa range. In fact, in cases where the Department must rely on a national average long-term interest rate for benchmarking purposes, there is no statutory or regulatory requirement that the rate reflect only lending to companies in the Aaa to Baa range. In addition, such a rate would likely reflect lending to companies in a ratings range broader than Aaa to Baa.

In the instant investigation, given that the Department has decided to reject all internal PRC interest rates for benchmarking purposes, the question before the Department is what long-term mark-up to use to construct the long-term RMB interest rate benchmark. In view of the transitional nature of financial accounting and reporting standards and practices in the PRC, as well as the PRC's underdeveloped credit rating capacity, the Department has determined that company-specific mark-ups (to account for investment risk) should not be the general rule. Instead, the Department will rely on a single mark-up for all companies not found to be uncreditworthy. That mark-up should therefore reflect the average investment risk associated with companies in the PRC not found uncreditworthy by the Department. Since the Department has (1) no objective basis to determine this average investment risk and (2) no basis to presume it is for companies with an investment-grade rating only, we have preliminarily used rates for BB-rated bonds, the highest non-investment grade, to calculate the mark-up. Alternatively, the Department may consider using a mark-up derived from the average of bonds rated from AAA to B minus and invite parties to comment for our final determination.

In the GOC Pre-Prelim Comments, the GOC further argues that the adjustment factor should be added to the short-term interest rate rather than multiplied. We addressed these concerns in the LWRP Decision Memorandum, at Comment 12, which we hereby incorporate by reference.

However, we have made one change to the long-term adjustment to correspond to the change described above regarding our regression-based benchmark. Specifically, because the benchmark now covers loans up to two years, we have calculated the long-term adjustment based on the difference in the BB rates for bonds that match the maturity of the loan in question and two-year bonds.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

Creditworthiness

In their petition, Petitioners alleged that Anhui BBCA was uncreditworthy for the years 2005 to 2006. On July 25, 2008, we determined that Petitioners did not provide a reasonable basis to believe or suspect that Anhui BBCA was uncreditworthy. *See* Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, ''Uncreditworthy Allegation for Anhui BBCA Biochemical Co., Ltd.'' (July 25, 2008).

On September 5, 2008, Petitioners submitted additional information to support their allegation. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate. Because the Department did not receive Petitioners' allegation until September 5, 2008, one week prior to our preliminary determination, we are still reviewing the allegation and will decide whether to investigate Anhui BBCA's creditworthiness after this preliminary determination.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Government Policy Lending

The Department is examining whether preferential loans were provided to citric acid producers based on government plans promoting modernization loans for encouraged projects. The GOC has asserted that there must be evidence that the policy caused the loan to be provided in order for the Department to find such a program countervailable. The GOC has further claimed that: (1) None of the cooperating respondents' loans or supporting documentation mentions any government policy or plan; (2) no plan or policy for the chemical industry on the record mentions targeted loans, or directs SOCBs to provide targeted project loans; and (3) none of these plans mentions the citric acid industry or citric acid producers, much less encourages modernization loans for the chemical industry.

Based on our review of the information and responses provided by the GOC, we preliminary determine that certain of the loans received by TTCA from SOCBs were made pursuant to government policy directives.

National-Government Policy Lending Program

Record evidence demonstrates that certain GOC policy documents outline

the government's goals regarding energy saving and pollution reduction, and the manner in which these goals would be implemented. For example, the PRC's *Eleventh Five-Year Plan* sets out as one of its policy goals to ''{o}ptimally develop of fundamental chemical raw material, actively develop fine chemical and eliminate high polluting chemical enterprise.'' *See* GQR, at page 31. The GOC has stated that this is a ''non-binding'' goal and that the only binding goal in regard to environment or pollution reduction is that ''energy consumption of unit GDP would be lowered down about 20% and emission volume of main pollutants would be decreased by 10% * * *'' *See* G2SR (9/2), at page 10. Further, according to the *State Council Circular on Realizing the Major Targets in the ''Outline of the Eleventh Five-Year Plan for National Economic and Social Development of the People's Republic of China and Division of Tasks*'', the reduction of energy consumption was to be the responsibility of the National Development and Reform Commission (''NDRC'') while the State Environmental Protection Administration (''SEPA'') was tasked with reducing major pollution discharges.

Also in connection with these energy saving and pollution goals, the NDRC formulated and the State Council approved the *Notice of State Council on Circulation of Comprehensive Work Plan on Energy Saving and Emission Reduction (Guo Fa 2007) No. 15) (''State Council Circular*''). The GOC has described the purpose of this document as ''enabling government departments at each level to understand the concrete tasks of energy saving and emission reduction, and proposing detailed work plans.'' *See* GQR, at page 41. In this document, there are a number of recommendations that specifically address the government's energy savings and emission goals, in particular with respect to financing:

> Consummate financial policies promoting energy-saving and emission reduction. The people's government at each level shall allocate certain funds within the financial budget, by way of subsidy and reward, to support major projects of energy-saving and emission-reduction, promotion of high effective energy-saving and new mechanism for energy-saving, construction of management ability of energy-saving as well as construction of supervision system for emission-reduction. We shall further promote financial basic construction investment to incline to energy-saving and environment-protection projects.

See GQR at Exhibit I–A–36, page 16. The State Council also recommends:

> Enhance financial service for energy-saving and environment-protection. We shall encourage and guide financial institutions to enhance credit support to circular economy, environment-protection, and reform projects for energy-saving and emission-reduction technologies, first provide direct financing service for qualified energy-saving and emission-reduction projects and circular economy projects.

See id. at page 17. The GOC has explained in its responses that the purpose of the cited passages was ''to enlarge the funding source for energy-saving and environment-protection projects, to assist and support the construction and promotion of energy-saving and emission reduction projects.'' *See* G2SR (9/2), at page 12. In terms of specific actions taken, the GOC explained that the first statement referred to a special fund established by the Ministry of Finance for basic infrastructure energy-saving and environmental-protection projects, while the second statement involved the Ministry of Environmental Protection (''MPE'') and the establishment of an information sharing system which would provide technical advice to enable banks to better assess the feasibility of and returns on pollution control projects. *See id.* Although the GOC has related these particular actions to the statements in the *State Council Circular*, it is unclear whether other actions or policies may also be included. For example, the relationship between the MPE sharing system and the provision of ''direct financing service for qualified energy-saving and emission-reduction projects'' is unclear, and we intend to seek clarification of these statements during the course of this investigation. For purposes of our preliminary determination, however, we conclude that the record evidence indicates that the purpose of the *State Council Circular* was to provide details on achieving the energy-saving and pollution-reducing goals and the means by which the goals would be fulfilled.

Additional record evidence indicates that specific guidance has been issued to PRC banks regarding the government's energy-saving and pollution-reduction goals. In particular, following the approval of the *State Council Circular*, the People's Bank of China (''PBOC'') issued the *Guidelines on Improvement and Strengthening of Financial Services in Energy Saving and Environmental Protection Areas* (Yin Fa 2007 No. 215) (''*PBOC Guidelines*''). In its response, the GOC stated that the document contains guidelines to banks and does not set concrete goals and objectives. The *PBOC Guidelines* were created in accordance with the *State Council Circular* and ''opinions in video conferences call regarding national wide work on emission reduction, in order to further improve industrial restructuring, evolution of economic growth mode as well as enhancement of good and fast economic development.'' The key sections of *PBOC Guidelines* state:

> {a}ll banking institutions and branches of the People's Bank of China shall fully recognize the importance of financial services in energy saving and emission reduction, enhance the sense of responsibility and mission, improve and strengthen the financial services in energy saving and emission reduction areas, reasonably control the increase of lending, pay attention to improvement of credit structure, strengthen the credit risk management, and enhance the coordinated and sustainable development of the economy and finance.

See Petitioner's April 24, 2008, response (''PSR'') at Exhibit 111. In regard to projects and lending, the *PBOC Guidelines* state:

> {a}ll banking financial institutions shall follow the national industry structure adjustment policy, and follow differentiation principles in allocating the loan resources. For investment projects encouraged by the government, a banking institution shall simplify the lending procedures and proactively provide lending supports; as to investment subject to restrictions * * * For any other projects, the banking financial institutions shall take into consideration of resource saving and environmental protection factors and shall follow general credit principles when providing lending supports.

See id.

Finally, the GOC has placed on the record several industrial catalogues which list industries and/or activities considered encouraged by the GOC. These catalogues include the *Catalogue for the Guidance of Industrial Structure Adjustment (2005 version), Catalogue for the Guidance of Foreign-Invested Industries (amended in 2007), Catalogue for the Guidance of Foreign-Invested Industries (amended in 2004)*, and *Catalogue for Industries, Products, and Technologies Currently Particularly Encouraged by the State for Development*. The GOC claims that citric producers are not identified in any of the catalogues as an encouraged industry. *See* GQR at I–10—I–15 and G2SR (9/2) at S2A2–S2A4.

TTCA reported a loan used to construct the *Project on Electricity Generator with Recycling Methane*. *See* T2SR (8/27) at 18. TTCA and the GOC provided supporting documentation regarding this loan. *See* T2SR, at Exhibit S37; *see also*, G1SR (9/2), at Exhibit S1–7–a–2 and Exhibit S1–8–b. This documentation is business proprietary

and, therefore, is discussed separately. *See* Memorandum to the File regarding, ''BPI Memo for Government Policy Lending'' (''BPI Lending Memo''). However, the documentation in relation to this loan received by TTCA demonstrates that the TTCA project that is funded by the loan was encouraged by the state and that, as shown above, there is a clear link between the TTCA project and the binding goals contained in the *Eleventh Five-Year Plan* and the subsequent documents issued by the State Council and the PBOC. In the BPI Lending Memo, we explain the relationship between the *Eleventh Five-Year Plan* and its implementing documents and the TTCA loan documents in further detail.

Based on this information, we preliminarily determine that the GOC has a policy in place to encourage and support preferential lending to certain encouraged projects, as expressly reflected in the documents described above. Consistent with our prior determinations, we also find that the loan received by TTCA from a SOCB constitutes a direct financial contribution from the government, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act. *See CFS from the PRC*, at Comment 8. Furthermore, the loan provides a benefit equal to the difference between what TTCA paid on its loan and the amount it would have paid on comparable commercials loans. As the basis for specificity relies on information designated business proprietary, we are unable to disclose our analysis in the **Federal Register** Notice and, therefore, it is discussed in the BPI Lending Memo.

To calculate the benefit under the national-government policy lending program, we used the benchmarks described in the Benchmarks and Discount Rates section above and the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we preliminarily determine that TTCA received a countervailable subsidy of 0.01 *ad valorem* under this program.

Shandong Province Policy Loans Program

Policy lending by Shandong Province was not separately alleged by the petitioners in the original petition. Record evidence, however, indicates that the Shandong Province's industrial policy promoted: (1) Financing and guarantees for key construction projects; (2) the development of more key projects and programs to include in the nation's plans; and (3) the active use of discount government loans to support policy financing. *See The Shandong Province Outline of the Tenth Five-Year Plan for National Economic and Social Development* (''*Shandong Province Tenth Five-Year Plan*'') provided at G1SR (9/2), at Exhibit S1–2–d. The GOC has stated in a supplemental questionnaire response that the Shandong Provincial government will, ''under the premise of considering the state industrial policies, * * * guide the activity of local enterprises and promote the industrial upgrade.'' *See* G2SR, at page 13. Thus, through the *Shandong Province Tenth Five-Year Plan*, the Shandong Provincial government has developed a policy to support the development of key projects to be included in national industrial policy, and this policy is effectuated by promoting financing and guarantees for these key construction projects.

The GOC has repeatedly stated that citric acid is not an industry encouraged by the state. However, the GOC also concedes that there is no uniform product classification used by all government agencies in the PRC. Instead, different government agencies may classify citric acid differently. *See* G2SR (9/2), at page 2.

Further, the *Law of the People's Republic of China on Commercial Banks* (December 27, 2003) (''*Commercial Banking Law*''), at Article 34, states that banks shall ''carry out their loan business upon the needs of the national economy and the social development and under the guidance of the state industrial policies.'' *See* Petition, at Exhibit IV–32. We note that the *Commercial Banking Law* prescribes that lending practices shall be based, at least in some measure, on the guidance of government industrial policy. Further, as noted above, the *Shandong Province Tenth Five-Year Plan* specifically directs bank financing to key construction projects. Consequently, for purposes of this preliminary determination, we conclude that record evidence demonstrates that there is a link between national-government industrial policies and the Shandong Province directives regarding banking lending.

TTCA reported that a loan was used to construct a citric acid and sodium citrate project. *See* T2SR, at page 18. The GOC and TTCA provided supporting documentation for this loan, which was used to construct the aforementioned project. *See* T2SR, at Exhibit S38; *see also*, G1SR (9/2), at Exhibit S1–7–b and Exhibit S1–8–d. As the information contained in the loan and project documentation is business proprietary, see BPI Lending Memo for additional details. However, this document demonstrates the link between the Shandong Provincial government's policy to support the development of key projects through financing and the company's loan documents.

On the basis of the above-cited record evidence, we preliminarily determine that the GOC has a policy in place to encourage and support preferential lending to key projects, as expressly reflected in the *Shandong Province Tenth Five-Year Plan*. The Department further finds that Shandong Province has a policy in place to provide lending in accordance with the GOC's policies. We find that a loan from a SOCB constitutes a direct financial contribution from the government, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act. Furthermore, the loan provides a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. As our basis for specificity relies on information designated business proprietary, we are unable to disclose our analysis in the **Federal Register** Notice and, therefore, it is discussed in the BPI Lending Memo.

To calculate the benefit under the provincial policy lending program, we used the benchmarks described in the Benchmarks and Discount Rates section above, as well as the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we preliminarily determine that TTCA received a countervailable subsidy of 0.41 *ad valorem* under this program.

Other Policy Bank Loans

Certain loans reported by TTCA were received from a Chinese policy bank, and the evidence indicates these loans were made under a particular lending program operated by that bank. The information regarding these loans is business proprietary and, therefore, is discussed separately in the BPI Lending Memo.

The Department typically treats policy banks, *i.e.*, special purpose, government-owned banks, as ''authorities'' within the meaning of section 771(5)(B) of the Act. *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and the accompanying Issues and Decision Memorandum, at page16. Thus, we preliminarily determine that these loans were provided by the GOC and that they constitute financial contributions under section 771(5)(D)(i) of the Act. We further determine preliminarily that these loans confer a benefit because the

recipient is paying less than it would for a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act. As our basis for specificity relies on information designated business proprietary, we are unable to disclose our analysis in the **Federal Register** Notice and, therefore, it is discussed in the BPI Lending Memo.

To calculate the benefit conferred by these loans, we used the benchmarks described in the Benchmarks and Discount Rates section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by certain sales reported by TTCA during the POI. On this basis, we preliminarily determine that TTCA received a countervailable subsidy of 0.48 percent *ad valorem* under this program.

B. ''Famous Brands'' Program—Yixing City

According to the *Implementing Opinions of City Government on Further Advancing the Brand Construction of Enterprise*, the Government of Yixing City provides a lump sum award to enterprises that receive a ''famous brands'' certificate from either the Famous Brand Promotion Committee of China or the Famous Brand Promotion Committee of Jiangsu. To receive an award, the enterprise must present its ''famous brands'' certificate from either promotion committee to the Quality and Technology Supervision Bureau of Yixing and the Finance Bureau of Yixing. The Bureaus will then review the submitted certificate and approve the award.

Yixing Union received a ''famous brands'' certificate from the Jiangsu Famous Brand Promotion Committee and was granted the lump sum award from the Government of Yixing City during the POI. *See* G1SR (9/2), at page 8; *see also*, YQR, at pages 14–15.

We preliminarily determine that the grant under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and also provides a benefit in the amount of the grant (*see* 19 CFR 351.504(a)).

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to any enterprise that it certified as a certificate of Famous Product of China or a Famous Product of Jiangsu Province. *See* G1SR (9/2), at Exhibit S1B–8. Further, the GOC reported that eligibility is not limited by law to any enterprise or group of enterprises, or to any industry or group of industries. Therefore, we preliminarily determine that there is no basis to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is *de facto* specific, we must examine the factors identified in section 771(5A)(D)(iii) of the Act. The GOC provided program usage data for 2005 through 2007 showing the industries that received the award and the number of companies per industry that received the award. *See* G1SR (9/2), at Exhibit S1B–11–12. Although the grants have been provided to a variety of industries, we preliminarily determine that the number is limited in accordance with section 771(5A)(D)(iii)(I) of the Act because only 34 companies received this award from 2005 through 2007. Therefore, we find the program to be *de facto* specific because the number of companies which received the award is limited, within the meaning of section 771(5A)(D)(iii)(I) of the Act. We preliminarily find the ''Famous Brands'' program provides a countervailable benefit to Yixing Union.

To calculate the benefit, we divided the amount of the grant by Yixing Union's total sales in the year the benefit was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt. On this basis, we preliminarily determine that a countervailable subsidy of 0.03 percent *ad valorem* exists for Yixing Union.

C. Reduced Income Tax Rates to FIEs Based on Location

To promote economic development and attract foreign investment, ''productive'' FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC receive preferential tax rates of 15 percent or 24 percent, depending on the zone, under Article 7 of the *FIE Tax Law.* See GQR, at Exhibit I–A–39. This program was created June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance. The March 18, 1988, *Circular of State Council on Enlargement of Economic Areas* enlarged the scope of the coastal economic areas and the July 1, 1991, *FIE Tax Law* continued this policy. The Department has previously found this program to be countervailable. *See CFS from the PRC, LWRP from the PRC,* and *Tires from the PRC.*

Yixing Union is located in a coastal economic development zone and was subject to the reduced income tax rate of 24 percent during the POI.

We preliminarily determine that the reduced income tax rate paid by productive FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Yixing Union would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.17 percent *ad valorem* under this program.

TTCA is also a productive FIE and is located in a coastal economic development zone where the income tax rate is 24 percent. Based on TTCA's response, we preliminary determine that TTCA did not use this program during the POI. *See* TTCA Preliminary Calc Memo, at page 7.

D. ''Two Free, Three Half'' Program

Under Article 8 of the *FIE Tax Law,* an FIE that is ''productive'' and is scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.

The GOC reported that Yixing Union was in the last year of the ''three half'' period under this program during the POI. TTCA did not use this program during the POI.

We preliminarily determine that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction

afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act. *See* CFS Decision Memorandum, at Comment 14.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Yixing Union would have paid in the absence of the program (24 percent, as described above under ''Reduced Income Tax Rates for FIEs Based on Location'') with the income tax rate the company actually paid (12 percent). On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.35 percent *ad valorem* under this program.

E. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

Article 73 of the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* authorizes a reduced income tax rate of 15 percent for ''productive'' FIEs located in coastal economic zones, special economic zones, or economic and technical development zones if they undertake: (1) Technology-intensive or knowledge-intensive projects; (2) projects with foreign investment of $30 million or more and a long payback period; or (3) energy, transportation and port construction projects. Additionally, FIEs that have been established in other zones specified by the State Council and are engaged in projects encouraged by the State may qualify for the reduced income tax rate of 15 percent upon approval by the State Taxation Bureau.

Cogeneration paid the reduced income tax rate of 15 percent under this program during the POI. TTCA did not use this program during the POI.

We preliminarily determine that the reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yixing Union, we treated the income tax savings enjoyed by Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. To compute the amount of the tax savings, we compared the rate Cogeneration would have paid in the absence of the program (30 percent) with the rate the company paid (15 percent). On this basis, we preliminarily determine the countervailable subsidy attributable to Yixing Union to be 2.07 percent *ad valorem* under this program.

F. Income Tax Credits on Purchases of Domestically Produced Equipment

The *Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Distribution of Interim Measures Concerning the Reduction and Exemption of Enterprise Income Tax for Investment in Chinese-made Equipment for Technological Renovation,* and *CAISHUI (2000) No. 49, Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchase of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises,* permits FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the *Catalog of Industrial Guidance for Foreign Investment.* The credit can be taken for domestically produced equipment so long as the equipment is not listed in the Catalog of Non-Duty-Exemptible Articles of Importation. *See* GQR, at page 70.

Cogeneration claimed credits under this program on the tax return filed in 2007. *See* Memorandum to the File, ''Correction to Appendix 1 of the Second Supplemental Questionnaire for Yixing Union Cogeneration, Co., Ltd.'' (September 4, 2008). TTCA and Yixing did not use this program during the POI.

We preliminarily determine that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue forgone by the government and provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. On this basis, we preliminarily determine that a countervailable subsidy of 0.11 percent *ad valorem* exists for Yixing Union under this program.

G. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment

As outlined in *GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs,* the GOC refunds FIEs with the VAT on purchases of certain domestic equipment produced if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (No. 37 (1997)) and equipment for projects listed in the *Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State.* To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its ''Registration Handbook for Purchase of Domestically Produced Equipment by FIEs'' as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. *See CFS from the PRC.*

TTCA reported receiving VAT rebates on its purchases of domestically produced equipment under this program. Yixing Union and

Cogeneration did not use this program during the POI.

We preliminarily determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT rebates, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

We requested that TTCA identify the category/kind of equipment for which it received VAT rebates from 2001 through the end of the POI. For one year, the total amount of the VAT rebates approved was less than 0.5 percent of TTCA's total sales for that year. For that year, therefore, we do not reach the issue of whether the VAT rebates were tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which it is received, consistent with 19 CFR 351.524(a).

In another year, however, the total amount of VAT rebates exceeded 0.5 percent of TTCA's total sales for that year. Based on TTCA's reported information, the VAT rebates were for capital equipment. *See* TQR, at Exhibit 39. Accordingly, the Department is treating the VAT rebates for this year as a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii).

To calculate the countervailable subsidy for TTCA, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b) and the Allocation Period section of this notice. Specifically, we used the discount rate described above in the Benchmarks and Discount Rates section to calculate the amount of the benefit for the POI. On this basis, we preliminarily determine that a countervailable subsidy of 0.23 percent *ad valorem* exists for TTCA.

H. VAT and Duty Exemptions on Imported Equipment

Enacted in 1997, the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (*GUOFA* No. 37) (''Circular No. 37'') exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. Qualified enterprises receive a certificate either from the NDRC or its provincial branch. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. To receive the exemptions, qualified enterprises must adequately document both the product eligibility and the eligibility of the imported article to the local Customs authority. The Department has previously found this program to be countervailable. *See CFS from the PRC* and *Tires from the PRC.*

TTCA, Yixing Union and Cogeneration reported receiving VAT and duty exemptions under this program.

We preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the VAT and tariff savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) because the program is limited to certain enterprises. *See* CFS Decision Memorandum, at Comment 16.

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

For TTCA, the total amount of the VAT and tariff exemptions for each year approved was less than 0.5 percent of TTCA's total sales for the respective year. Therefore, we do not reach the issue of whether TTCA's VAT and tariff exemptions were tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which the benefit is received, consistent with 19 CFR 351.524(a). On this basis, we preliminarily determine that a countervailable subsidy of 0.08 percent *ad valorem* exists for TTCA.

For Yixing Union, the total amount of the VAT and tariff exemptions approved for some years was less than 0.5 percent of Yixing Union's total sales. Therefore, we have expensed those amounts in the year in which they were received, consistent with 19 CFR 351.524(a). For those years in which the approved VAT and tariff exemptions were greater than 0.5 percent of Yixing Union's total sales for that year, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL.

For Cogeneration, the total amount of the VAT and tariff exemptions approved for some years was less than 0.5 percent of the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) in those years. Therefore, we have expensed those amounts in the year in which they are received, consistent with 19 CFR 351.524(a). In other years, the VAT and tariff exemptions approved for Cogeneration were greater than 0.5 percent of the combined sales of Yixing Union and Cogeneration (less any sales between the two companies) sales for that year. Accordingly, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefit(s) over the AUL.

To calculate the benefit for Yixing Union, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b). Specifically, we used the discount rate described above in the ''Benchmarks and Discount Rates'' section to calculate the amount of the benefit for the POI. First, we divided Yixing Union's VAT and tariff exemptions by Yixing Union's total sales during that period. Next, we divided Cogeneration's VAT and tariff exemptions by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. Finally, we summed these two rates. On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.69 percent *ad valorem* under this program.

I. Local Income Tax Exemption and Reduction Program for ''Productive'' FIEs

Under Article 9 of the *FIE Tax Law,* the provincial governments have the authority to exempt the local income tax of three percent to FIEs. According to

the *Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province,* (*see* GOC CVD Questionnaire Response at Exhibit I–V–3) a ''productive'' FIE may be exempted from the 3 percent local income tax during the ''Two Free, Three Half'' period. Additionally, according to Article 6, FIEs eligible for the reduced income tax rate of 15 percent can also be exempted from paying local income tax. The Department has previously found this program to be countervailable. *See CFS from the PRC* and *Tires from the PRC.*

Yixing Union and Cogeneration reported receiving an exemption from local income tax during the POI. TTCA, however, did not use this program during the POI.

We preliminarily determine that the exemption from the local income tax received by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yixing Union, we treated the income tax savings enjoyed by Yixing Union and Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the local income tax rate Yixing Union and Cogeneration would have paid in the absence of the program (*i.e.*, three percent) with the income tax rate the companies actually paid. First, we divided Yixing Union's tax savings received during the POI by Yixing Union's total sales during that period. Second, we divided Cogeneration's tax savings received during the POI by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. Finally, we summed these two rates. On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.50 percent *ad valorem* under this program.

J. Anqiu Finance Bureau Grant

TTCA reported receiving three grants in 2007 related to technology achievements and energy saving projects. *See* TQR, at page 49. Two of the grants are discussed in the ''Programs Preliminarily Determined To Be Not Countervailable'' section below. Current information on the record does not indicate that these grants are tied to any of the other programs discussed in this notice. Further, it does not appear that the Department has previously investigated any of the programs.

TTCA reported receiving a non-recurring grant in 2007 from the Anqiu Finance Bureau. *See* TQR, at page 49. The GOC reported that to receive this grant an enterprise submits a project feasibility study to the municipal government who then, in turn, recommends the project to the Administration of Finance of Shandong Province and the Economic and Trade Commission of Shandong Province for approval. *See* G1SR (8/27), at Exhibit S1–18–3. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a).

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to enterprises whose projects meet certain energy and water saving criteria and are deemed to have economic and social benefit. *See* G1SR (8/27), at pages 27 and 29. The GOC reported that eligibility is not limited by law or in fact, to any enterprise or group of enterprises, or to any industry or group of industries. *See* G1SR (8/2), at page 28. Therefore, we preliminarily determine that there is no basis to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is *de facto* specific, we examine the four *de facto* specificity factors under section 771(5A)(D)(iii) of the Act. Section 771(5A)(D)(iii) of the Act also provides that we take into account the length of time during which a subsidy program has been in operation when evaluating the four *de facto* specificity factors. In the case of a new subsidy program, the first three *de facto* specificity factors (*i.e.*, limited number of users, dominant users, or disproportionately large user) may provide little or misleading indications regarding whether a program is *de facto* specific. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65356 (November 25, 1998) (''CVD Preamble''); SAA, at page 931. The GOC provided partial program usage data for 2006 and 2007 (the GOC stated that it had information on the number of grants but not the amount of grants) because the program only began in 2006. See G1SR (9/2), at page 14. Consequently, in accordance with the CVD Preamble, we next consider the fourth *de facto* specificity factor (*i.e.*, discretion) because the manner in which the GOC has exercised its discretion in the early stages of this program (*e.g.*, by excluding certain applicants and limiting the benefit to a particular industry) might impact our analysis of the first three *de facto* specificity factors. *See* CVD Preamble, 63 FR at 65356; SAA, at page 931.

As noted above, in addition to meeting specified energy and water saving criteria, projects submitted by enterprises must be recommended by municipal levels of government and deemed to provide economic and social benefit to receive the grant. *See* G1SR (8/27), at page 29. It appears that the GOC has the ability to exercise discretion in the decision to provide grants under this program. Consequently, in contrast to the ''Investment Development Award'' program noted below, at the early stage of this program, we are able to rely on the first three *de facto* specify factors provided under 771(5A)(D)(iii) of the Act to preliminarily determine whether this program is specific as a matter of fact.

The GOC usage data indicates six enterprises comprising two industries received grants in 2007. *See* G1SR (9/2), at page 14. Consequently, we find that the actual recipients of the subsidy are limited in number on both an enterprise and industry basis within the meaning of section 771(5A)(D)(iii)(I) of the Act. Further, in accordance with the Department's regulations, our *de facto* specificity analysis is sequential and we will find a domestic subsidy to be specific based on the presence of a single factor. *See* 19 CFR 351.502(a). Therefore, we are not performing an analysis to determine whether the enterprise or industry is a dominant or disproportionately large user. In addition, as noted above, the GOC did not provide the amounts of benefits received by industry, which is required to determine dominant or disproportionately large usage.

To calculate the benefit, we divided the amount received from the non-recurring grant by TTCA's total sales in 2007. On this basis, we preliminarily determine the countervailable subsidy to be 0.20 percent *ad valorem* for this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Excessive VAT Rebates on Export

The GOC began refunding the VAT for exported products in 1984. *See*, GQR, at page 83. The current rules governing the program, *Provisional VAT Rules of China* (Decree 134 of the State Council) (''*Provisional VAT Rules*''), were

promulgated in 1993. *See id.,* at Exhibit I–T–3. Article 25 of the *Provisional VAT Rules* permits VAT rebates for exports.

The GOC argues that an excessive rebate of VAT upon exports is not possible given the manner in which the system is structured.

The Department has consistently found that the GOC's program to rebate VAT on exports does not result in an excessive VAT remission. *See* CWP Decision Memorandum, at page 16; LWRP Decision Memorandum at page 11; and Tires Decision Memorandum, at page 24. In those cases, we found no subsidy because VAT was assessed on home market sales at a rate of 17 percent, while the rebate was set at 13 percent. The same is true with respect to citric acid. *See* GQR, at page 80. Therefore, consistent with 19 CFR 351.517(a) and the above-cited determinations, we preliminarily find the VAT remission upon export is not excessive and does not confer a countervailable subsidy on the subject merchandise.

In their allegation, petitioners additionally noted that citric acid producers may not pay VAT on their agricultural inputs. The GOC and the responding companies have reported that the VAT rate on corn (the agricultural input used to produce citric acid) is 13 percent and that this amount is paid by the citric acid producers on their purchases. *See id.,* at page 80; TQR, at page 30; and YQR, at page 21. The GOC has further responded that: (i) Sellers of goods are responsible for paying the VAT to the government (Article 1 of the *Provisional VAT Rules*) and (ii) agricultural products sold by the agricultural producers that produce them are exempt from VAT (Article 16 of the *Provisional VAT Rules*). *See* G1SR (8/27), at page 13. Thus, citric acid producers pay a VAT on their corn purchases in the sense that the VAT appears on the purchase invoices for corn and they deduct this VAT in preparing their VAT reconciliations (to calculate the amount of VAT they must remit on their sales of citric acid), but no VAT is remitted to the government by the agricultural producers selling the corn.

Because citric acid producers pay the VAT on their corn purchases and it is the agricultural producers who are exempted from paying the VAT on their sales, we preliminarily determine that any potential subsidy arising from this exemption is conferred on the agricultural producers and not on the purchasers (*i.e.*, citric acid producers). Therefore, we preliminarily determine that the VAT exemption on agricultural products does not provide a countervailable subsidy on the subject merchandise.

As noted above, the VAT rate set for corn is 13 percent. TTCA reported that it was exempted from paying that VAT on its sales of corn scrap during the POI. *See* TQR, at page 49. Because any potential subsidy from such an exemption would be tied to sales of corn scrap, in accordance with 19 CFR 351.525(b)(5)(i), we preliminarily determine that there is no countervailable subsidy conferred on subject merchandise from the VAT exemption on corn scrap sales.

B. Science and Technology Reward—Anqiu City

TTCA reported receiving a grant in 2007 as the result of a science and technology award. *See* TQR, at page 49. To calculate the potential benefit, we divided the amount received by TTCA's total sales in 2007. On this basis, we preliminarily determine that a potential countervailable subsidy of less than .005 percent *ad valorem* exists for TTCA. *See* TTCA Preliminary Calc Memo, at page 9. Where the countervailable subsidy rate for a program is less than .005 percent, the program is not included in the total CVD rate. *See, e.g., Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France,* 70 FR 39998 (July 12, 2005), and the accompanying Issues and Decision Memorandum at ''Purchases at Prices that Constitute 'More than Adequate Remuneration''' (citing *Final Results of Administrative Review: Certain Softwood Lumber Products from Canada,* 69 FR 75917 (December 20, 2004)). Consequently, we are exercising our discretion to not investigate the benefit provided by this non-recurring subsidy.

C. Investment Development Award—Government of Anqiu

TTCA was awarded the first grant under the ''Investment Development Award'' program by the People's Government of Anqiu for TTCA's investment in a technology project. *See* G1SR (8/27), at Exhibit S1–18–1, page 3. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a).

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to any enterprise that has productive fixed asset investment for a single project of more than RMB 10 million. *See* G1SR (8/27), at Exhibit S1–18–1. If the aforementioned criterion is met, any enterprise will receive a benefit and there is no discretion to approve or disapprove. *See id.* Further, the GOC reported that eligibility is not limited by law or in fact, to any enterprise or group of enterprises, or to any industry or group of industries. *See* G1SR (8/27), at page 17. Therefore, we preliminarily determine that there is no basis to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is *de facto* specific, we must examine the four *de facto* specificity factors under section 771(5A)(D)(iii) of the Act. Section 771(5A)(D)(iii) of the Act also provides that we take into account the length of time during which a subsidy program has been in operation when evaluating the four *de facto* specificity factors. In the case of a new subsidy program, the first three *de facto* specificity factors (*i.e.*, limited number of users, dominant users, or disproportionately large user) may provide little or misleading indications regarding whether a program is *de facto* specific. *See* CVD Preamble at 65356; SAA, at page 931.

The GOC provided program usage data for 2007 only because the ''Investment Development Award'' program was created in 2006, with no awards bestowed until 2007. *See* G1SR (8/27), at pages 14 and 18. Although the number of users were not large during the period, in accordance with the CVD Preamble, we also consider the fourth *de facto* specificity factor (*i.e.*, discretion) because the manner in which the GOC has exercised its discretion in the early stages of this program (*e.g.*, by excluding certain applicants and limiting the benefit to a particular industry) might impact our analysis of the first three *de facto* specificity factors. *See* CVD Preamble, 63 FR at 65356; SAA, at page 931.

As noted above, any enterprise will receive grants provided under the ''Investment Development Award'' program if the enterprise meets a specified project investment threshold. It appears that the GOC does not have the ability to exercise discretion in the decision to provide grants under this program. Therefore, due to the GOC's apparent lack of discretion, at the early stage of this program, we preliminarily determine that it is not appropriate to rely on an analysis of the first three *de facto* specify factors provided under 771(5A)(D)(iii) of the Act to determine whether this program is specific as a matter of fact. Consequently, we do not find any basis to determine that the program is specific.

III. Programs Preliminarily Determined To Be Not Used By TTCA and Yixing Union

A. Discounted Loans for Export-Oriented Industries
B. Funds Provided for the Rationalization of the Citric Acid Industry
C. Loans Provided to the Northeast Revitalization Program
D. State Key Technology Renovation Project Fund
E. National Level Grants to Loss-making SOEs
F. Reduced Income Tax Rate for High or New Technology Enterprises
G. Income Tax Exemption Program for Export-Oriented FIEs
H. Tax Benefits to FIEs for Certain Reinvestment of Profits
I. Preferential Income Tax Rate for Research and Development at FIEs
J. Preferential Tax Programs for Encouraged Industries
K. Preferential Tax Policies for Township Enterprises
L. Provincial Level Grants to Loss-making SOEs
M. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
N. Provision of Land for Less Than Adequate Remuneration in Anhui Province
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Income Tax Exemption for FIEs Located in Jiangsu Province

In our initiation, we included the program ''Income Tax Exemption for FIEs located in Jiangsu Province.'' According to the GOC, the *Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province* (Order of the People's Government of Jiangsu Province, June 17, 1992) includes a ''basket'' of benefits which can be enjoyed by FIEs located in Jiangsu province. *See* GQR, at Exhibit I–V–3.

Certain benefits under this program are already addressed under the ''Two Free, Three Half'' program and the ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs.'' Therefore, we are treating the ''Income Tax Exemption for FIEs located in Jiangsu Province'' as not used during the POI to avoid the double-counting of subsidies.

Q. Preferential Tax Programs for Enterprises Located in the Su Qian Economic Development Zone
R. Provision of Land for LTAR in the Su Qian Economic Development Zone
S. Provision of Electricity for LTAR in the Su Qian Economic Development Zone
T. Loans and Interest Subsidies Pursuant to the Liaoning Province's Five-Year Framework
U. Local Income Tax Exemptions and Reductions for Firms Located in Qilu Chemicals Industry Park
V. Preferential Tax Program for Enterprises Located in Shanxi Province
W. Funding for Enterprises under the Shanxi Province 10th Five-Year Plan
X. Export Interest Subsidy Funds for Enterprises Located in Shenzhen City
Y. Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province
Z. Exemptions and Reductions in Taxes and Fees for Chemical Research and Development Institutions Located in Zhejiang Province
AA. Provision of Land for LTAR for Enterprises Located in Hangzhou Bay Chemical Park
BB. Provision of Electricity for LTAR for Enterprises Located in Hangzhou Bay Chemical Park

VI. Programs for Which More Information Is Required

As mentioned under the Case History section of this notice, the Department recently determined to investigate several additional alleged subsides including: The Provision of TTCA's Plant and Equipment for LTAR; Provision of Land to SOEs for LTAR; Provision of Land in the YEDZ for LTAR; Provision of Land-use Fees in Jiangsu Province for LTAR; Provision of Land in the Anqiu City Economic Development Zone for LTAR; Administration Fee Exemption in Anqiu City; Exemption of Water and Sewage Fees in Anqiu City; Tax Grants, Rebates and Credits in the Yixing Economic Development Zone (''YEDZ''); Provision of Water in the YEDZ for LTAR; Provision of Electricity in the YEDZ for LTAR; Provision of Construction Services in the YEDZ for LTAR; Administration Fee Exemption in the YEDZ; and Grants to FIEs for Projects in the YEDZ. We intend to seek information on these programs from the GOC and the respondents, and issue an interim analysis describing our preliminary findings with respect to these programs before the final determination so that parties will have the opportunity to comment on our findings.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/manufacturer	Net subsidy rate
TTCA Co., Ltd.	1.41
Yixing Union Biochemical Co., Ltd.; and Yixing Union Co-generation Co., Ltd.	3.92
Anhui BBCA Biochemical Co., Ltd.	97.72
All-Others	2.67

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the companies under investigation, Anhui BBCA, TTCA and Yixing Union. Sections 703(d) and 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all-others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Petitioners contend that because Anhui BBCA is owned by the government, the Department cannot treat the GOC as cooperative and Anhui BBCA as non-cooperative. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 4. Consequently, Petitioners argue that because the GOC is a fully cooperating respondent, Anhui BBCA's rate cannot be excluded from the all-others rate. *See* Petitioners' Comments on Anhui BBCA and the all-others Rate, at page 3. Finally, Petitioners believe that Anhui BBCA is not participating in this investigation in an attempt to avoid its inclusion in the calculation of the all-others rate. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 4. Petitions cite to *Live Cattle From Canada*, where the Department included a non-cooperating respondent in the calculation of the all-others rate to mitigate potential selective participation by respondents. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 5 and 6, citing *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada*, 64 FR 56768, 56743 (October 21, 1999) (''*Live Cattle From Canada*'').

The GOC notes that section 705(c)(5)(A)(i) of the Act explains that the all-others rate must exclude any rates determined entirely under section 776 of the Act (*i.e.*, a rate determined using facts otherwise available) and the statute affords the Department no discretion to do otherwise. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 2. Also, the GOC believes that Petitioners' reliance upon *Live Cattle*

From Canada is misplaced. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 3–5. Finally, the GOC argues that the Department has always treated the GOC and SOEs as distinct entities. Otherwise, it would be difficult to understand how the Department could evaluate a single entity providing a financial contribution or benefit to itself. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 9.

As noted in the Use of Facts Otherwise Available section above, because Anhui BBCA did not respond to the Department's questionnaire, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the CVD rate of Anhui BBCA entirely on facts otherwise available. The fact that Anhui BBCA is an SOE does not mean that the GOC's participation makes Anhui BBCA a cooperative respondent. Nor does it lead us to conclude that the rate we have calculated for Anhui BBCA is based on anything other than facts available.

With respect to *Live Cattle From Canada,* the Department is clearly concerned when a company withdraws its response in order to manipulate an all-others rate. However, those are not the facts we have here. Anhui BBCA elected not to respond to the questionnaire. This occurs frequently in our investigations (and administrative reviews). Section 776(b) establishes the means for addressing this, *i.e.*, the application of AFA, which is what we have done in this case. Therefore, because Anhui BBCA's rate is based entirely on facts available, we are not including it in the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

To calculate the all-others rate, we have taken a simple average of the two responding firms' rates. We have not weight averaged the rates of TTCA and Yixing Union because doing so risks disclosure of proprietary information. Finally, because TTCA's rate includes export subsidies, the all-others rate also includes export subsidies.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of citric acid from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

Program-Wide Change

In the GOC Pre-Prelim Comments, the GOC argues that if the Department preliminarily finds countervailable certain programs related to the *FIE Tax Law* (*e.g.*, ''Two Free, Three Half,'' ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs,'' and ''Income Tax Exemption for FIEs Located in Jiangsu Province''), it should exclude these rates from the companies' cash deposit rate pursuant to 19 CFR 351.526, due to a program-wide change. Specifically, the law that established these programs, the *FIE Tax Law,* was repealed effective January 1, 2008. Thus, according to the GOC, the programs terminated before the preliminary determination. The GOC further contends that no respondent can receive residual benefits under the ''Two Free, Three Half'' program and that no companies can receive residual benefits under the ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs'' or the ''Income Tax Exemption for FIEs Located in Jiangsu Province.''

Under 19 CFR 351.526(b), a program-wide change: ''(1) Is not limited to an individual firm or firms; and (2) is effectuated by an official act * * * '' Moreover, 19 CFR 351.526(a) states that the Department may take a program-wide change into account when establishing the estimated CVD cash deposit rate if (1) the program-wide change occurred subsequent to the POI, but prior to the preliminary determination; and (2) the change in the amount of countervailable subsidies provided under the program is able to be measured. However, the Department will not adjust the cash deposit rate for a terminated program if we determine that residual benefits may continue to be bestowed pursuant to 19 CFR 351.526(d)(1).

For the ''Two Free, Three Half'' program, we agree with the GOC that the *FIE Tax Law* was repealed prior to the date of the preliminary determination and may meet the criteria under 19 CFR 351.526(b)(2). However, in its responses to the Department's questions on the ''Two Free, Three Half'' program, the GOC stated that once the *FIE Tax Law* was repealed, the *Corporate Income Tax Law* became effective. *See* GQR at I–64. According to Article 57 of the *Corporate Income Tax Law*, and provisions of the State Council, enterprises established prior to the promulgation of the *Corporate Income Tax Law* may enjoy reduced tax rates and continue to enjoy preferential treatments within five years after the law is promulgated. Additionally, companies that have not been able to enjoy the preferential treatments of the *FIE Tax Law*, before the termination of the law because the enterprise was unprofitable, can still claim benefits under the new *Corporate Income Tax Law*.

Although the GOC may be correct in its statement that no respondent will enjoy residual benefits from this program, the *Corporate Income Tax Law* allows FIEs within the PRC to continue to receive benefits from this program beyond the termination date. The GOC makes note of this fact in its response. *See* G1SR (8/27), at page 10. Thus, while benefits to the two cooperating respondents in this investigation would be terminated under the programs examined, the program's overall residual benefits have not been terminated. Therefore, we preliminarily determine that the criteria under 19 CFR 351.526(a) have not been met and we decline to adjust Yixing Union's rate to reflect termination of the program. *See* 19 CFR 351.526(d)(1).

For the ''Local Income Tax Exemption and Reduction Programs for 'Productive' FIEs,'' the GOC has stated in its response that there are no provisions continuing this program in the *Corporate Income Tax Law*. *See* GQR, at page 93. Based on our review of the *Corporate Income Tax Law*, we are not able to confirm the GOC's claim. Moreover, *the Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* (No. 39 of the State Council) states that enterprises that previously benefited from the ''Two Free, Three Half'' program and other preferential treatment in the form of tax deductions and exemptions may continue to enjoy those benefits. Therefore, it is unclear whether local income tax reductions and exemptions will continue for some transition period. Thus, we preliminarily determine that the criteria under 19 CFR 351.526(a) have not been met and decline to set Yixing Union's rate to reflect termination of the program.

For the ''Income Tax Exemption for FIEs Located in Jiangsu Province,'' the benefits received under this program have already been captured under the ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs'' program, and ''Two Free, Three Half'' program. Therefore, no rate has been set for this program.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are

making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: September 12, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–21949 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AV00

Atlantic Highly Migratory Species; Essential Fish Habitat

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

ACTION: Notice of availability of a draft integrated environmental impact statement and a fishery management plan amendment; request for written comments; notice of public hearings.

SUMMARY: NMFS announces the availability of an draft integrated environmental impact statement and fishery management plan amendment pursuant to the National Environmental Policy Act (NEPA) that examines alternatives to revise existing Highly Migratory Species (HMS) Essential Fish Habitat (EFH); considers additional Habitat Areas of Particular Concern (HAPCs); and analyzes fishing and non–fishing impacts on EFH consistent with the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) and other relevant Federal laws.

DATES: Public hearings for the draft integrated document will be held from September through December, 2008. See **SUPPLEMENTARY INFORMATION** for hearing dates, times, and locations. Written comments on this action must be received no later than 5 p.m., local time, on November 18, 2008.

ADDRESSES: Public hearings will be held in Massachusetts, Delaware, Maryland, North Carolina, Florida, and Alabama. Written comments on this action must be sent to Chris Rilling, Highly Migratory Species Management Division by any of the following methods:

• E-mail: *HMSEFH@noaa.gov*.

• Mail: 1315 East–West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on EFH Amendment to HMS FMP.''

• Fax: 301–713–1917.

Copies of the draft Amendment 1 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) are available from the HMS website under Breaking News at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Chris Rilling (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Chris Rilling or Sari Kiraly by phone at (301) 713–2347 or by fax at (301) 713–1917.

SUPPLEMENTARY INFORMATION: The Magnuson–Stevens Act (16 U.S.C. 1801 *et seq*.) as amended by the Sustainable Fisheries Act (Public Law 104–297) requires the identification and description of EFH in FMPs and the consideration of actions to ensure the conservation and enhancement of such habitat. The EFH regulatory guidelines (50 CFR 600.815) state that NMFS should periodically review and revise EFH, as warranted, based on available information.

EFH, including HAPCs, for HMS was identified and described in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and in the 1999 Amendment 1 to the Atlantic Billfish FMP. EFH for five shark species was updated in the 2003 Amendment 1 to that FMP. Later, NMFS reviewed all new and existing EFH data in the 2006 Consolidated HMS FMP and determined that revisions to existing EFH for some Atlantic HMS may be warranted. The draft integrated environmental impact statement and amendment to the Consolidated HMS FMP (hereafter Draft Amendment 1) proposes alternatives to amend the existing EFH identifications and descriptions.

Habitat Areas of Particular Concern (HAPCs)

To further the conservation and enhancement of EFH, the EFH guidelines encourage FMPs to identify HAPCs. HAPCs are areas within EFH that should be identified based on one or more of the following considerations: 1) the importance of the ecological function provided by the habitat; 2) the extent to which the habitat is sensitive to human–induced environmental degradation; 3) whether, and to what extent, development activities are, or will be stressing the habitat type; and 4) the rarity of the habitat type. HAPCs can be used to focus conservation efforts on specific habitat types or areas that are especially important ecologically or particularly vulnerable to degradation. HAPCs are not required to have any specific management measures and an HAPC designation does not

automatically result in closures or other fishing restrictions. Rather, the areas are intended to focus conservation efforts and bring heightened awareness to the importance of the habitat being considered as an HAPC.

Draft Amendment 1 considers several alternatives for designating HAPCs for bluefin tuna (BFT) spawning areas in the Gulf of Mexico. A growing body of evidence collected in the Gulf of Mexico, including but not limited to, NMFS observer program data, NMFS larval surveys, and peer–reviewed publications that include information from pop–up archival tags (PATs) and pop–up satellite archival tags (PSATs) have highlighted the central Gulf of Mexico as an important BFT spawning area. Although no directed BFT fishing is permitted in the Gulf of Mexico, and there are no direct environmental effects of designating the Gulf or portions of the Gulf as a HAPC, the designation could help identify additional conservation efforts, for example, to minimize the impacts of oil and gas development projects on BFT spawning habitat.

Fishing and Non–Fishing Activities

In addition to considering revisions to existing EFH and designating new HAPCs, the EFH guidelines require that FMPs identify fishing and non–fishing activities that may adversely affect EFH. Each FMP must include an evaluation of the potential adverse impacts of fishing on EFH designated under the FMP, effects of each fishing activity regulated under the FMP, as well as the effects of other Federal FMPs and non–federally managed fishing activities (i.e., state fisheries) on EFH. The FMPs must describe each fishing activity and review and discuss all available relevant information such as the intensity, extent, and frequency of any adverse effects on EFH; the type of habitat within EFH that may be adversely affected; and the habitat functions that may be disturbed (50 CFR 600.815(a)(2)). If adverse effects of fishing activities are identified, then the Magnuson–Stevens Act requires the effects of such fishing activities on EFH to be minimized to the extent practicable (Magnuson–Steven Act section 303(a)(7)).

NMFS completed the original analysis of fishing and non–fishing impacts in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and presented all new information gathered during the five-year review, including a comprehensive review of all fishing gears and non–fishing activities that could potentially impact EFH, in the 2006 Consolidated HMS FMP. In that FMP, NMFS preliminarily concluded that no HMS gear, other than bottom longline, was likely to have an effect on HMS or other managed species' EFH since most HMS gears such as rod and reel, handline, and pelagic longline, are fished in the water column where they are unlikely to affect either the water column or benthic habitat that define EFH for managed species. Bottom longline gear is used predominantly in the Atlantic commercial shark fishery to target large and small coastal sharks. The Consolidated FMP also indicated that additional analyses would be initiated to determine the extent to which bottom longline gear might be impacting specific habitats such as coral reefs. which are generally considered the habitat type most likely to be adversely affected by bottom longline gear.

This draft amendment includes: an assessment of whether HMS bottom longline gear is used in EFH; an analysis of the intensity, extent, and frequency of such impacts; and a determination as to whether those impacts are more than minimal and not temporary. The ''more than minimal and not temporary'' threshold was established by NMFS as the necessary threshold for taking additional action to minimize such impacts. Based on the analysis, NMFS has determined that bottom longline gear is not having more than a minimal and temporary effect on EFH and thus has not proposed any measures to restrict the use of bottom longline gear. The findings are based on observer program data which indicate that only a small fraction of bottom longline sets occur within coral reef habitat, as well as recent measures included in Amendment 2 to the Consolidated HMS FMP which are expected to greatly reduce fishing effort in the Atlantic shark fishery (73 FR 40658; July 15, 2008). Nevertheless, NMFS will continue to work with the Regional Fishery Management Councils to identify areas where bottom longline gear used in the reef fish fishery or snapper grouper fishery may be having an adverse effect on habitat, and where the Councils may propose to prohibit bottom longline gear. In those cases, NMFS may consider complementary regulations to prohibit shark bottom longline gear as was done in the Caribbean (72 FR 5633, February 7, 2007) and most recently in the South Atlantic Marine Protected Areas (73 FR 40658, July 15, 2008).

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold six public hearings to receive comments from fishery participants and other members of the public regarding this draft amendment to the Consolidated HMS FMP.

Date	Time	Hearing Location
Sept 30, 2008	3:30–4:30 p.m.	Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910
Oct 14, 2008	7:00–9:00 p.m.	Key Largo Grand Resort & Beach Club, 97000 South Overseas Highway, Key Largo, FL 33037
Oct 15, 2008	7:00–9:00 p.m.	Ramada Inn, 1701 S. Virginia Dare Trail, Kill Devil Hills, NC 27948
Oct 28, 2008	7:00–9:00 p.m.	Renaissance Riverview Plaza Hotel, 64 South Water St., Mobile, AL 36602
Nov 18, 2008	7:00–9:00 p.m.	Sheraton Ferncroft Resort, 50 Ferncroft Rd., Danvers, MA 01923
Dec 3, 2008	7:00–9:00 p.m.	Hilton Wilmington Riverside, 301 N. Water Street, Wilmington, NC 28401

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Rilling at (301) 713–2347 at least 7 days prior to the hearing date.

NMFS has requested time to present this draft amendment to the five Atlantic Regional Fishery Management Councils and the Atlantic and Gulf States Marine Fisheries Commissions at their meetings during the public comment period. Please see the Councils' and Commissions' fall and winter meeting notices for dates, times, and locations. NMFS also anticipates holding a meeting of its HMS Advisory Panel (AP) from September 30 – Oct 2,

2008, in Silver Spring, Maryland, and will present the draft amendment to the HMS AP.

Copies of Draft Amendment 1 to the Consolidated HMS FMP are available for review (see **ADDRESSES**). NMFS anticipates completing this integrated document and any related documents by the spring of 2009.

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

Dated: September 10, 2008.

James P. Burgess

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

[FR Doc. E8–21846 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD16

Marine Mammals; File No. 782–1702

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that NMFS National Marine Mammal Laboratory, 7600 Sand Point Way, NE, Seattle, WA 98115–0070 has been issued an amendment to scientific research Permit No. 782–1702.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: An amendment to Permit No. 782–1702–04 has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The amended permit extends the duration of the permit through September 30, 2009 to allow continuation of research on harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) in California, Washington, and Oregon. This minor amendment also revokes authority to take Steller sea lions (*Eumetopias jubatus*). This is the fifth amendment of the subject permit, which was issued originally issued on September 16, 2003 (68 FR 58663).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 16, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–21988 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK36

New England Fishery Management Council; Public Meeting; Cancellation

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council has cancelled the public meeting of its Groundfish Committee that was scheduled for Monday, September 29, 2008 beginning at 9 a.m., in Peabody, MA.

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

SUPPLEMENTARY INFORMATION: The initial notice was published on September 11, 2008, (73 FR 52831), and the meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: September 16, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21900 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

September 15, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: September 19, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain three-yarn circular stretch knit fleece fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 82.2008.08.05.Fabric.ST&RforBadger Sportswear

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested

entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published Final Procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256) (''procedures'').

On August 5, 2008, the Chairman of CITA received a Request for a commercial availability determination (''Request'') under the CAFTA-DR from Sandler, Travis & Rosenberg, P.A., on behalf of Badger Sportswear Inc., for certain three-yarn circular stretch knit fleece fabrics. On August 7, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by August 19, 2008, and any Rebuttal be submitted by August 25, 2008. On August 19, 2008, CITA advised interested parties that it would extend its deadlines, such that Responses would be due by August 20, 2008, and that Rebuttals would be due by August 26, 2008.

CITA received a Response from Elasticos Centroamericanos y Textiles (''Elcatex'') objecting to the Request and offering to supply a substitute for the subject product. Badger submitted a Rebuttal to Elcatex's Response, arguing that Elcatex had failed to demonstrate that its proposed fabric was an acceptable substitute for the subject product. Because there was insufficient information on the record of the proceeding to make a determination whether the fabric proposed by Elcatex was an acceptable substitute, on August 28, 2008, the Chairman of CITA issued supplemental questions to both Elcatex and Badger regarding the proposed fabric. Submissions from Elcatex and Badger were received on September 2, 2008.

Section 203(o)(4)(C)(ii) of the CAFTA-DR Act provides that after receiving a Request, a determination will be made as to whether the subject product is available in commercial quantities in a timely manner in the CAFTA-DR countries. In the instant case, the information on the record clearly indicates that Badger made significant efforts to source the fabric in the CAFTA-DR countries, including from Elcatex, and that Elcatex has not demonstrated that it can supply either the specified fabric or an acceptable substitute. Therefore, in accordance with section 203(o) of the CAFTA-DR Act, and CITA's procedures, as CITA has determined that the subject product is not available in commercial quantities in a timely manner, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

CITA notes that in accordance with section 203(o)(4) of the CAFTA-DR Act, Article 3.25 of the CAFTA-DR Agreement, and section 9 of its procedures, six months after CITA's determination that a product is not commercially available in the CAFTA-DR countries, a CAFTA-DR supplier may submit a Request to Remove or Restrict a specific fabric that had been added to the Commercial Availability List in Annex 3.25. The supplier may request that the product be removed, but must provide the same substantive information as required of Responses, as provided in section 6 of CITA's procedures. Should CITA determine that the product is available in commercial quantities in a timely manner in the CAFTA-DR countries, e.g. that a CAFTA-DR supplier has demonstrated that it is capable to supply the subject product, that product will be removed from the Commercial Availability List in Annex 3.25.

The subject fabric has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability.

Specifications:

Three-Yarn Circular Stretch Knit Fleece

HTS: 6001.21.00
Description: Three yarn circular knit stretch fleece fabric, 20 gauge

Face Yarn:
Fiber Content:
60% ring spun cotton/40% polyester
Average Yarn Number:
Metric - 51/1
English - 30/1

Tie Yarn:
Fiber Content:
60% ring spun cotton/40% polyester
Average Yarn Number:
Metric - 51/1
English - 30/1

Nap (Fleece) Yarn:
Fiber Content:
52% ring spun cotton/48% polyester
Average Yarn Number:
Metric - 17/1
English - 10/1

NOTE: Yarn sizes relate to size prior to texturizing.

Weight:
Metric - 305-330 grams per sq. m.
English - 9.0-9.8 oz. per sq. yd.
Width: Slit open and finished to:
Metric - 156-163 cm
English - 62-64 inches
Finish: Bleached and/or piece dyed. Napped on technical back.

NOTE: All physical parameters may vary by plus/minus 5%. Fiber content may vary byplus/minus 3%.

Performance Characteristics:
Shrinkage: 6% maximum shrinkage (length and width); 1% positive shrinkage (AATCC No. 135).
Torque/Spirality: Maximum 5 degrees left or right (protractor method).
Stretch: Minimum 20% stretch in length, 30% in width.
Pilling: Grade 4 or better on technical face (ASTM D3512 Random Tumble Method)
Color Fastness to laundering: Grade 4 or better on polyester and cotton portions ofmultifiber strip (AATCC 61 Test No. 2A)
Color Fastness to wear: Grade 4 or better (AATCC 107)
Color Fastness to heat: Grade 4 or better on white polyester fabric (AATCC 117 Test Temperature II)
Color Fastness to crocking: Grade 4 or better dry; Grade 3 or better wet technical face side (AATCC 8)
Flammability: Class 1

Appearance: No obvious wale pattern (must be smooth); soft finish

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–22004 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0112]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2008 ed.) and Notice of Public Meeting.

SUMMARY: The Department of Defense is considering recommending changes to the *Manual for Courts-Martial, United States* (2008 ed.) (MCM). The proposed changes constitute the 2008 annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and

Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

This notice also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

In accordance with paragraph III.B.4 of the Internal Organization and Operating Procedures of the JSC, the committee also invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the described format.

DATES: Comments on the proposed changes must be received no later than November 18, 2008, to be assured consideration by the JSC. A public meeting for comments will be held on October 30, 2008, at 10 a.m. in the 14th Floor Conference Room, 1777 N. Kent St., Rosslyn, VA 22209–2194.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Thomas E. Wand, Executive Secretary, Joint Service Committee on Military Justice, Air Force Legal Operations Agency, Military Justice Division, 112 Luke Avenue, Suite 343, Bolling Air Force Base, DC 20032, (202) 767–1539, e-mail *Thomas.wand@pentagon.af.mil*.

SUPPLEMENTARY INFORMATION: The proposed amendments to the MCM are as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 1003 is amended to read as follows:

''(3) *Fine.* Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. In the case of a member of the armed forces, summary and special courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In the case of a person serving with or accompanying an armed force in the field, a summary court-martial may not adjudge a fine in excess of two-thirds of one month of the highest rate of enlisted pay, and a special court-martial may not adjudge a fine in excess of two-thirds of one year of the highest rate of officer pay. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial.''

(b) R.C.M. 1003(c) is amended by renumbering subparagraph (4) as subparagraph (5) and adding a new subparagraph (4) as follows:

''(4) *Based on status as a person serving with or accompanying an armed force in the field.* In the case of a person serving with or accompanying an armed force in the field, no court-martial may adjudge forfeiture of pay and allowances, reduction in pay grade, hard labor without confinement, or a punitive separation.''

(c) R.C.M. 1106(d) is amended to read as follows:

''(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) *Form.* The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) *Required contents.* The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any, any recommendation for clemency by the sentencing authority made in conjunction with the announced sentence, and the staff judge advocate's concise recommendation.

(4) *Legal errors.* The staff judge advocate or legal officer is not required to examine the record for legal errors. However, when the recommendation is prepared by a staff judge advocate, the staff judge advocate shall state whether, in the staff judge advocate's opinion, corrective action on the findings or sentence should be taken when an allegation of legal error is raised in matters submitted under R.C.M. 1105 or when otherwise deemed appropriate by the staff judge advocate. The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the staff judge advocate's statement, if any, concerning legal error is not required.

(5) *Optional matters.* The recommendation of the staff judge advocate or legal officer may include, in addition to matters included under subsection (d)(3) and (4) of this rule, any additional matters deemed appropriate by the staff judge advocate or legal officer. Such matter may include matters outside the record.

(6) *Effect of error.* In case of error in the recommendation not otherwise waived under subsection (f)(6) of this rule, appropriate corrective action shall be taken by appellate authorities without returning the case for further action by a convening authority.''

(d) R.C.M. 1113(d)(2)(A)(iii) is amended to read as follows:

''(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57a(b)(1), has postponed the service of a sentence to confinement.''

(e) R.C.M. 1113(d)(2)(C) is amended by deleting the last two sentences, and replacing them with the following:

''No member of the armed forces, or person serving with or accompanying an armed force in the field, may be placed in confinement in immediate association with enemy prisoners or with other foreign nationals not subject to the code. The Secretary concerned may prescribe regulations governing the place and conditions of confinement.''

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 32, Article 108, Military Property of the United States—sale, loss, damage, destruction, or wrongful disposition, paragraph c.(1) is amended to read as follows:

''(1) *Military Property*. Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, all government property is not military property. An item of government property is not military property unless the item in question meets the definition provided above. It is immaterial whether the property sold, disposed, destroyed, lost, or damaged had been issued to the accused, to someone else, or even issued at all. If it is proved by either direct or circumstantial evidence that items of individual issue were issued to the accused, it may be inferred, depending on all the evidence, that the damage, destruction, or loss proved was due to the neglect of the accused. Retail merchandise of service exchange stores is not military property under this article.''

(b) Paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d) is amended to read as follows:

''(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson.''

(c) Paragraph 46, Larceny and wrongful appropriation, the Note following paragraph b.(1)(d) is amended to read as follows:

''[**Note:** If the property is alleged to be military property, as defined in paragraph 46.c.(1)(h), add the following element]''

(d) Paragraph 46, Larceny and wrongful appropriation, is amended by re-lettering paragraph 46.c.(1)(h) as paragraph 46.c.(1)(i), and adding a new paragraph 46.c.(1)(h) as follows:

''(h) *Military Property*. Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, all government property is not military property. An item of government property is not military property unless the item in question meets the definition provided above. Retail merchandise of service exchange stores is not military property under this article.''

(e) Paragraph 68b. is added as follows:

''68b. Article 134—(Child pornography)

a. *Text. See* paragraph 60.

b. *Elements*.

(1) *Possessing, receiving, or viewing child pornography*.

(a) That the accused knowingly and wrongfully possessed, received, or viewed child pornography; and

(b) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Possessing child pornography with intent to distribute*.

(a) That the accused knowingly and wrongfully possessed child pornography;

(b) That the possession was with the intent to distribute; and

(c) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Distributing child pornography*.

(a) That the accused knowingly and wrongfully distributed child pornography to another; and

(b) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Producing child pornography*.

(a) That the accused knowingly and wrongfully produced child pornography; and

(b) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation*.

(1) It is not a defense to any offense under this paragraph that the minor depicted was not an actual person or did not actually exist.

(2) An accused may not be convicted of possessing, receiving, viewing, distributing, or producing child pornography, if he was not aware of the contraband nature of the visual depictions. Awareness may be inferred from circumstantial evidence such as the name of a computer file.

(3) ''*Child Pornography*'' means any visual depiction of a minor, or what appears to be a minor, engaging in sexually explicit conduct.

(4) ''*Distributing*'' means delivering to the actual or constructive possession of another.

(5) ''*Minor*'' means any person under the age of 18 years.

(6) ''*Possessing*'' means exercising control of something. Possession may be direct physical custody like holding an item in one's hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.

(7) ''*Producing*'' means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.

(8) ''*Sexually explicit conduct*'' means actual or simulated:

(a) sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) bestiality;

(c) masturbation;

(d) sadistic or masochistic abuse; or

(e) lascivious exhibition of the genitals or pubic area of any person.

(9) ''*Visual depiction*'' includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, or computer image or picture, whether made or produced by electronic, mechanical, or other means.

(10) Affirmative defenses.

(a) It shall be an affirmative defense to a charge of possessing child pornography that the accused promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction:

(i) Took reasonable steps to destroy each such visual depiction; or

(ii) reported the matter to a law enforcement agency and afforded that

agency access to each such visual depiction.

(b) It shall be an affirmative defense to any offense under this paragraph that all of the persons engaging in sexually explicit conduct in a visual depiction were in fact persons at least 18 years old.

(11) On motion of the government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Lesser included offenses.*

(1) *Possessing, receiving, or viewing child pornography*

Article 80—attempts.

(2) *Possessing child pornography with intent to distribute*

Article 80—attempts.

Article 134—possessing child pornography.

(3) *Distributing child pornography*

Article 80—attempts.

Article 134—possessing child pornography.

Article 134—possessing child pornography with intent to distribute.

(4) *Producing child pornography*

Article 80—attempts.

Article 134—possessing child pornography.

Article 134—possessing child pornography with intent to distribute.

e. *Maximum punishment.*

(1) *Possessing, receiving, or viewing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Possessing child pornography with intent to distribute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(3) *Distributing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Producing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

f. *Sample specification.*

Possessing, receiving, viewing, possessing with intent to distribute, distributing or producing child pornography.

In that _____ (personal jurisdiction data), did, at _____, on or about _____ knowingly and wrongfully (possess)(receive)(view)(distribute)(produce) child pornography, to wit: A (photograph)(video)(film)(picture)(digital image)(computer image) of a minor, or what appears to be a minor, engaging in sexually explicit conduct (, with intent to distribute the said child pornography).''

Section 3. These amendments shall take effect on [30 days after signature].

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to [30 days after signature] that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to [30 days after signature], and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

The White House

Changes to the Discussion Accompanying the Manual for Courts Martial, United States

(a) Paragraph (4) of the Discussion immediately after R.C.M. 202(a) is amended to read as follows:

''(4) *Limitations on jurisdiction over civilians.* Court-martial jurisdiction over civilians under the code is limited by judicial decisions. The exercise of jurisdiction under Article 2(a)(11) in peace time has been held unconstitutional by the Supreme Court of the United States. Before initiating court-martial proceedings against a civilian, relevant statutes, decisions, service regulations, and policy memoranda should be carefully examined.''

(b) The first paragraph of the Discussion following R.C.M. 1003(b)(3) is amended to read as follows:

A fine is in the nature of a judgment and, when ordered executed, makes the accused immediately liable to the United States for the entire amount of money specified in the sentence. A fine normally should not be adjudged against a member of the armed forces unless the accused was unjustly enriched as a result of the offense of which convicted. In the case of a civilian subject to military law, a fine, rather than a forfeiture, is the proper monetary penalty to be adjudged, regardless of whether unjust enrichment is present.

Changes to Appendix 21, Analysis of Rules for Courts-Martial

(a) Add the following to the Analysis accompanying R.C.M. 1106(d):

''*200_ Amendment:* Subsection (d) is restated in its entirety to clarify that subsections (d)(4), (d)(5) and (d)(6) were not intended to be eliminated by the 2008 Amendment.

2008 Amendment: Subsections (d)(1) and (d)(3) were modified to simplify the requirements of the staff judge advocate's or legal officer's recommendation.''

Changes to Appendix 23, Analysis of Punitive Articles

(a) Add the following to the Analysis accompanying Paragraph 44, Article 119—Manslaughter:

''b. *Elements.*

200_ Amendment: The 2008 Amendment inadvertently omitted the change to this paragraph in the 2007 Amendment. Paragraph (2)(d) of the elements is corrected to restore the 2007 Amendment.

2008 Amendment: Notes were included to add an element if the person killed was a child under the age of 16 years.

e. *Maximum punishment.*

2008 Amendment: The maximum authorized confinement for voluntary manslaughter was increased from 15 years to 20 years when the person killed was a child under the age of 16 years. The maximum authorized confinement for involuntary manslaughter was increased from 10 years to 15 years when the person killed was a child under the age of 16 years.''

September 15, 2008.

Morgan Frazier,

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

[FR Doc. E8–21965 Filed 9–18–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning ''Combined Skirt-Reefing and Slider Method for Controlling Parachute Opening''

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for U.S. licensing of Patent No. US 7,419,122 entitled ''Combined Skirt-Reefing and Slider

Method for Controlling Parachute Opening'' issued September 2, 2008. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4184 or *e-mail: Jeffrey.Ditullio@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–21924 Filed 9–18–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Disposal and Reuse of Fort Monroe, VA, Resulting From the 2005 Base Closure and Realignment Commission's Recommendations

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army intends to prepare an EIS for the disposal and reuse of Fort Monroe, Hampton, Virginia. Pursuant to the BRAC law, Fort Monroe is to close by September 14, 2011. Other actions included in the closing of Fort Monroe are relocating the Headquarters, U.S. Army Training and Doctrine Command (TRADOC); the Installation Management Command (IMCOM) Northeast Region; the U.S. Army Network Enterprise Technology Command (NETCOM) Northeast Region; and the Army Contracting Agency Northeast Region Office to Fort Eustis, Virginia. The U.S. Army Accessions Command and the U.S. Army Cadet Command will be relocated to Fort Knox, Kentucky. These relocations have been or will be addressed in separate National Environmental Policy Act (NEPA) documents for those locations.

DATES: The scoping meeting for the EIS will be held on October 28, 2008, 7 p.m. to 9 p.m., Northampton Community Center, 1435 Todds Lane, Hampton, VA 23666.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Guerrero; phone: (757) 788–5363; e-mail: *jennifer.lee.guerrero@us.army.mil.*

SUPPLEMENTARY INFORMATION: Fort Monroe is a 570-acre U.S. Army Garrison located at the southeastern tip of the Virginia Lower Peninsula between Hampton Roads and the Lower Chesapeake Bay. The hallmark of Fort Monroe is its stone fortress and moat.

The proposed action (Army primary action) is to dispose of the surplus property generated by the BRAC-mandated closure of Fort Monroe. Reuse of Fort Monroe by others is a secondary action resulting from disposal. The Army has identified two disposal alternatives (early transfer and traditional disposal), a caretaker status alternative, and the no action alternative (as required by NEPA). The EIS will analyze the impact of each reuse alternative upon a wide range of environmental resource areas including, but not limited to, air quality, traffic, noise, biological resources, water resources, geology and soils, cultural resources, socioeconomic, utilities, land use, aesthetics and visual resources, hazardous and toxic substances, and cumulative environmental effects.

The Army will conduct an environmental impact analysis that will focus on the effects of closure and reuse. One preliminary finding is that transportation impacts will have the most significant effect, with or without a major tourism component in the reuse plan. Also, at this early stage, impacts to air quality, infrastructure, and land use are not considered significant. With respect to cultural resources, significant adverse impacts are possible, but these can be mitigated by provisions contained in the Programmatic Agreement between the Army and the Virginia Department of Historic Resources.

Additional resources and conditions may be identified as a result of the scoping process initiated by this NOI. Other opportunities for public participation will be announced in the respective local news media. The public will be invited to participate in scoping activities for the EIS and comments from the public will be considered before any action is taken to implement the disposal and reuse of Fort Monroe.

Dated: September 12, 2008.

Addison D. Davis, IV,

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

[FR Doc. E8–21807 Filed 9–18–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Scoping Meetings for Update of the Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin in Georgia, Florida, and Alabama

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Supplement to Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Mobile District, issued a Notice of Intent (NOI) in the **Federal Register** (73 FR 9780) published on February 22, 2008, describing the preparation of a Draft Environmental Impact Statement (EIS), as required by the National Environmental Policy Act (NEPA) to address the proposed update of the Water Control Manual (WCM) for the Apalachicola-Chattahoochee-Flint (ACF) River Basin located in Georgia, Florida, and Alabama. The Corps will hold five public scoping meetings during the month of October as part of its review and update of the WCM for the ACF River Basin. The public is invited to attend the scoping meetings which will provide information on the WCM update process and afford the opportunity to receive input from the public about their issues and concerns regarding that process. All five public meetings will be held using an open house format, allowing time for participants to review specific information and to provide comments to the resource staff attending the meeting.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Questions about the manual update or NEPA process can be answered by: Mr. Brian Zettle, Biologist, Environment and Resources Branch, Planning and Environmental Division, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628–0001; Telephone (251) 690–2115; or delivered by electronic facsimile at (251) 694–3815; or e-mail: *brian.a.zettle@.usace.army.mil.* You may also request to be included on the mailing list for public distribution of notices, meeting announcements and documents.

SUPPLEMENTARY INFORMATION: The meeting dates are:

1. October 20, 2008, 5 p.m.–8 p.m. (EDT), Apalachicola, FL.

2. October 21, 2008, 5 p.m.–8 p.m. (CDT), Dothan, AL.

3. October 22, 2008, 5 p.m.–8 p.m. (EDT), LaGrange, GA.

4. October 23, 2008, 4 p.m.–7 p.m. (EDT), Marietta, GA.

5. October 29, 2008, 5 p.m.–8 p.m. (EDT), Gainesville, GA.

The meeting locations are:

1. Apalachicola, FL—Franklin County Courthouse, 33 Market Street, Apalachicola, FL 32320, (850) 653–8861.

2. Dothan, AL—Dothan Convention Center, 4106 Ross Clark Circle, Dothan, AL 36303, (334) 712–9808.

3. LaGrange, GA—Callaway Center at West Georgia Technical College, One College Circle, LaGrange, GA 30240, (706) 845–4323.

4. Marietta, GA—Cobb County Government: Civic Center, Hudgins Hall, 548 S. Marietta Parkway SE., Marietta, GA 30060, (770) 528–8450.

5. Gainesville, GA—Georgia Mountain Center, 301 Main Street, SW., Gainesville, GA 30503, (770) 534–8420.

Additional information on the ACF River Basin and the Water Control Manual update process will be posted on the Mobile District Web page as it becomes available: *http://www.sam.usace.army.mil.*

Dated: September 12, 2008.

Byron G. Jorns,

Colonel, Corps of Engineers, District Commander.

[FR Doc. E8–21912 Filed 9–18–08; 8:45 am]

BILLING CODE 3710–CR–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–520–001, FERC–520]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

September 12, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of April 15, 2008 (73 FR 20267–20269) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by October 20, 2008.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. 1902–0083 as a point of reference. The Desk Officer may be reached by telephone at 202–395–7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08–520–001. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–520 ''Application for Authority to Hold Interlocking Directorate Positions'' (OMB No. 1902–0083) is used by the Commission to implement the statutory provisions of section 305 of the Federal Power Act (FPA) as amended by Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA)(16 U.S.C. 825d). Section 305(b) makes the holding of certain defined interlocking corporate positions unlawful unless the Commission has authorized the interlocks to be held and, requires the applicant to show in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the position. The Commission implements these provisions through its filing requirements in the Code of Federal Regulations (CFR) 18 CFR part 45. The information required under Part 45 generally identifies the applicant, describes the various interlocking positions the applicant seeks authorization to hold, provides information on the applicant's financial interests, other officers and directors of the firms involved, and the nature of the business relationships among the firms.

Two types of FERC–520 applications are provided for, that which is described in 18 CFR 45.8 as a ''full'' application and that which is described in 18 CFR 45.9 as an ''informal'' application for automatic authorization. Section 45.8 ''full'' applications are made by (1) an officer or director of more than one public utility; (2) an officer or director of a public utility and of a public utility securities underwriter; or (3) an officer or director of a public utility and of an electrical equipment supplier to that utility. Section 45.9 ''informational applications'' are made by (1) an officer or director of two or more public utilities where the same holding company owns, directly or indirectly, wholly or in part, the other public utility; (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other; or (3) an officer or director of more than one public utility, if such person is already authorized under Part 45 to hold different positions where the interlock involves affiliated public utilities.

Without this information collection, the Commission and the public would not be able to inquire into and determine whether public or private interests will be adversely affected by the holding of such positions.

Under the current OMB authorization, the Commission was allowing the filing of FERC–520 in hardcopy and/or diskette/CD. However, through RM07–16–000, implemented March 1, 2008, the electronic filing of FERC–520 filings is also accepted through the Commission's eFiling system.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: The two types of interlocking directorate applications, a ''full application'' pursuant to 18 CFR 45.8 and the much more abbreviated ''informational application'' pursuant to 18 CFR 45.9 are represented separately here. Public reporting burden for each is estimated as:

Type of application filed annually	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
Full	17	1	51.8	881
Informational	911	1	29.5	23,595
Total				24,476

The estimated total cost to respondents is $1,487,199 [24,476 hours divided by 2080 hours[1] per year, times $126,384[2] which equals $1,487,199]. The cost per respondent is $1,603. The increase in the estimated total cost over what was reported in 2005 is due to the informational filings not being included in earlier estimates. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, using technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable filing instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The cost estimate for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed information collection is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions used to calculate the reporting burden; and (3) ways to enhance the quality, utility and clarity of the information to be collected.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21873 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Number of hours an employee works each year.

[2] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2085–014, 67–113, 2175–014, 120–020 California]

Southern California Edison; Notice of Availability of the Draft Environmental Impact Statement for the Big Creek Projects

September 12, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the applications for relicensing four Southern California Edison (SCE) projects, which are part of the Big Creek System: Mammoth Pool Project (FERC No. 2085); Big Creek Nos. 2A, 8 and Eastwood (FERC No. 67); Big Creek Nos. 1 and 2 (FERC No. 2175); and Big Creek No. 3 (FERC No. 120), located in Fresno and Madera Counties, California, and has prepared a Draft Environmental Impact Statement (draft EIS) for the projects.

SCE's existing 865-megawatt Big Creek System includes the integrated operation of nine major powerhouses, six major reservoirs, numerous small diversions, various conveyance facilities, and electrical transmission lines, authorized under seven Commission licenses. The four projects evaluated in the draft EIS occupy about 6,870 acres of federal land administered by the U.S. Department of Agriculture, Forest Service, in the Sierra National Forest.

In the draft EIS, staff evaluates the applicant's proposal and alternatives for relicensing the projects. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Comments should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed within 45 days of the notice in the **Federal Register**, and should reference the project the comments refer to: Project No. 2085–014 (Mammoth Pool Project); Project No. 67–113 (Big Creek Nos. 2A, 8 and Eastwood; Project No. 2175–014 (Big Creek Nos. 1 and 2); or (Project No. 120–020). 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 instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You may also file your request to intervene electronically. You do not need intervenor status to have the Commission consider your comments.

Copies of the draft EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Internet at *http://www.ferc.gov*

under the eLibrary link. Enter the docket number (P–067, P–2175, P–2085, or P–120) 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.

CD versions of the draft EIS have been mailed to everyone on the mailing list for the projects. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified 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 these or other pending projects. For assistance, contact FERC Online Support.

For further information, contact James Fargo at (202) 502–6095 or at *james.fargo@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21872 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–100–000]

Texas Eastern Transmission, LP; Notice of Availability of the Environmental Assessment for the Proposed Northern Bridge Project

September 12, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Texas Eastern Transmission, LP in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of a 1,083 horsepower (hp) uprate of an existing compressor; the installation of an additional compressor (13,333 hp); and the abandonment of four existing reciprocating gas compressors (5,400 hp); as well as associated valves, piping, and appurtenant facilities at Texas Eastern's existing Holbrook Compressor Station in Richhill Township, Greene County, Pennsylvania. The project also includes a 1,650 hp uprate of an existing compressor at Texas Eastern's existing Uniontown Compressor Station in Uniontown Township, Fayette County, Pennsylvania.

The project would provide 150 dekatherms per day (Dth/d) of new capacity from Clarington, Ohio, to the Delmont Discharge in Pennsylvania. The project would provide a means for providing northeast markets with access to Rocky Mountain supplies from an interconnection between Texas Eastern and the REX–East facilities in Docket No. CP07–208.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, interested individuals, affected landowners, newspapers, libraries, and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

You can make a difference by providing us with your specific comments or concerns about the Project. 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 October 14, 2008.

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 number CP08–100–000 with your submission. The Commission encourages electronic filing of comments and has dedicated 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 2, PJ11.2.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

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.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission 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.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21874 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC08–161–000]

Florida Gas Transmission Company, LLC; Notice of Filing

September 11, 2008.

Take notice that on August 14, 2008, Florida Gas Transmission Company, LLC (FGT) submitted a filing seeking permission to start capitalizing interest on its planned Phase VIII Expansion Project commensurate with the date of its filing, in Docket No. PF08–14–000, of its intent to file an application for a certificate under the Commission's Pre-filing procedures set forth in 18 CFR 157.21 (2008), instead of pursuant to accounting guidance promulgated in Accounting Release No. 5, Capitalization of Interest During Construction.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21889 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Revised Notice for Commission Open Meeting on September 18, 2008

September 12, 2008.

On September 11, 2008, the Commission issued a Notice pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b, announcing the agenda for the Commission's open meeting to be held on September 18, 2008.

Take notice that the docket numbers for the item listed as ''E–25'' are revised to read as follows:

E–25; RM06–16–004 and RR08–1–001.

A corrected version of the Sunshine Notice for the September 18, 2008 open meeting will be posted in the Commission's eLibrary system and the Commission's Web site.

This Notice is issued pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b. Chairman Kelliher, Commissioners Kelly, Spitzer, Moeller and Wellinghoff, voted to issue this notice on September 12, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–21869 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–29–000]

Northern Illinois Gas Company; Notice of Petition for Rate Approval

September 11, 2008.

Take notice that on September 3, 2008, Northern Illinois Gas Company (Nicor Gas) filed an application for rate approval pursuant to sections 284.123(b)(2) and 284.224 of the Commission's regulations. Nicor Gas requests that the Commission approve: (1) An increase in its currently effective rates for services provided pursuant to Nicor Gas' blanket certificate issued in Docket No. CP92–481–000; and (2) to make certain revisions to its Statement of Operating Conditions.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21887 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–466–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 11, 2008.

Take notice that on September 2, 2008, El Paso Natural Gas Company (EPNG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No.

CP08–466–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to decrease the Maximum Allowable Operating Pressures (MAOP) of the Lakes Meter Station Line (Line No. 20108) and the Chandler Line (Line No. 2029) and to thereafter operate the lines at the lower MAOP, and abandon capacity on Line No. 2029, located in Maricopa County, Arizona, 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, EPNG proposes to decrease the existing MAOP of Line No. 20108 from 715 psig to 266 psig and Line No. 2029 from 650 psig to 430 psig. EPNG also proposes to decrease the existing design capacity on Line No. 2029 from 34 MMcf/d to 27 MMcf/d. EPNG states that the proposed MAOP decrease will not impair EPNG's ability to meet its current contractual obligations on the two pipelines.

Any questions regarding the application should be directed to Richard Derryberry, Director, Regulatory Affairs Department, El Paso Natural Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944, or call (719) 520–3782.

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. E8–21888 Filed 9–18–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8585–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080215, ERP No. D–SFW–L64054–AK, Kenai National Wildlife Refuge Draft Revised Comprehensive Conservation Plan, Implementation, AK.

Summary: While EPA expressed a lack of objections, EPA recommended that there be a commitment to prepare a future Transportation Plan, an Oil and Gas Decommissioning Plan, and a Tribal Consultation Plan. Rating LO.

EIS No. 20080238, ERP No. D–AFS–J65520–WY, Off-Highway Vehicle (OHV) Route Designation Project, Proposing to Improve Management of Public Summer Motorized Use (May 1–November 30) by Designating Roads and Motorized Trails, Bridger-Teton National Forest, Buffalo, Jackson and Big Piney Ranger Districts, Teton, Lincoln and Sublette Counties, WY.

Summary: EPA expressed concern about water quality, soil and wildlife impacts. Rating EC2.

EIS No. 20080262, ERP No. D–SFW–K64027–NV, Desert National Wildlife Refuge Complex, Ash Meadows, Desert, Moapa Valley and Pahranagat National Wildlife Refuges, Comprehensive Conservation Plan, Clark, Lincoln and Nye counties, NV.

Summary: EPA has a lack of objections to the proposed project and supports the restoration efforts included in the preferred alternatives. Rating LO.

EIS No. 20080276, ERP No. D–FTA–J53009–CO, Gold Line Corridor Project, To Implement Fixed-Guideway Transit Service within the Golden Line Study area between Denver Union Station (DUS) and Ward Road in Wheat Ridge, Denver, Arvada, Wheat Ridge, Adam and Jefferson Counties, CO.

Summary: EPA expressed concern about water quality, flooding and erosion impacts from increased impervious surfaces. Rating EC1.

Final EISs

EIS No. 20080271, ERP No. F–BLM–J65493–UT, Kanab Field Office Resource Management Plan, Implementation, Portions of Kane and Garfield Counties, UT.

Summary: EPA continues to have concerns about impacts to water quality, air quality, aquatic resources, wildlife habitats, and recreational resources.

EIS No. 20080286, ERP No. F–AFS–J65499–UT, Pockets Resource Management Project, Proposes to Salvage Dead and Dying Spruce/Fir, Regenerate Aspen, and Manage Travel, Escalate Ranger District, Dixie National Forest, Garfield County, UT.

Summary: The FEIS adequately addressed EPA's concerns regarding potential water quality impacts from the project to Antimony Creek, the only perennial stream within the project area.

EIS No. 20080289, ERP No. F–FTA–G59004–TX, Northwest Corridor Light Rail Transit Line (LRT) to Irving /Dallas/Fort Worth International Airport, Construction, Dallas County, TX.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080301, ERP No. F–BLM–J65494–UT, Richfield Field Office Resource Management Plan, Implementation, Future Management of the Public Lands and Resource, Glen Canyon National Recreation Area, Capitol Reef and Canyonlands National Parks, Sanpete, Sevier, Piute, Wayne and Garfield Counties, UT.

Summary: EPA continues to have concerns with potential impacts to air quality, riparian and wetlands resources, and water quality.

EIS No. 20080306, ERP No. F–AFS–H65037–00, Nebraska and South Dakota Black-Tailed Prairie Dog Management, To Manage Prairie Dog Colonies in an Adaptive Fashion, Nebraska National Forest and Associated Units, Including Land and Resource Management Plan Amendment 3, Dawes, Sioux, Blaines Counties, NE and Custer, Fall River, Jackson, Pennington, Jones, Lyman, Stanley Counties, SD.

Summary: No formal comment letter was sent to the preparing agency.

Dated: September 16, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–21957 Filed 9–18–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8585–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly Receipt of Environmental Impact Statements

Filed 09/08/2008 through 09/12/2008. Pursuant to 40 CFR 1506.9.

EIS No. 20080352, Draft Supplement, COE, 00, White River Minimum Flood Study, To Provide an Improved Minimum Flow for the Benefit of the Tail Water Fishery, White River Basin Lakes: Beaver, Table Rock, and Bull Shoal Lakes on the White River; Norfork Lake on the North Fork White River; and Greens Ferry Lake on the Little Red River, AR and MO, *Comment Period Ends:* 11/03/2008, *Contact:* Mike Biggs 501–324–7342.

EIS No. 20080353, Draft Supplement, AFS, 00, Gypsy Moth Management in the United States: A Cooperative Approach, Proposing New Treatments that were not Available when the 1995 EIS was written, US, *Comment Period Ends:* 11/03/2008, *Contact:* William Oldland 304–285–1585.

EIS No. 20080354, Final EIS, NPS, VA, Manassas National Battlefield Park General Management Plan, Implementation, Fairfax and Prince William Counties, VA, *Wait Period Ends:* 10/20/2008, *Contact:* Bill Arguto 202–619–7277.

EIS No. 20080355, Final EIS, AFS, OR, Ashland Forest Resiliency Project, To Recover from Large-Scale High-Severity Wild Land Fire, Upper Bear Analysis Area, Ashland Ranger District, Rogue River-Siskiyou National Forest, Jackson County, OR, *Wait Period Ends:* 10/20/2008, *Contact:* Ken Grigsby 541–618–2126.

EIS No. 20080356, Draft Supplement, AFS, CA, Kings River Project, New Information regarding Pacific Fisher (Martes pennanti), Proposal to Restore Historical Pre-1850 Forest Conditions, Implementation, High Sierra Ranger District, Sierra National Forest, Fresno County, CA, *Comment Period Ends:* 11/03/2008, *Contact:* Ray Porter 559–855–5355.

EIS No. 20080357, Draft EIS, FRC, CA, Big Creek Hydro Project (FERC Nos. 67, 120, 2085, and 2175) Proposes to Relicenses, Big Creek Nos. 2A, 8 and Eastwood—FERC No. 67; Big Creek Nos. 1 and 2—FERC No. 2175; Mammoth Pool—FERC No. 2085 and Big Creek No. 3 FERC No. 120, Frenso and Madera Counties, CA, *Comment Period Ends:* 11/03/2008, *Contact:* Patricia Schaub 1–866–208–3372.

EIS No. 20080358, Final EIS, SFW, TX, Williamson County Regional Habitat Conservation Plan, Application for an Incidental Take Permit, Williamson County, TX, *Wait Period Ends:* 10/20/2008, *Contact:* Bill Seawell 512–490–0057.

EIS No. 20080359, Final EIS, BIA, WY, Riverton Dome Coal Bed Natural Gas (CBNG) and Conventional Gas Development Project, Construction of Well Pads, Roads, Pipelines, and Production Facilities, Wind River Indian Reservation (WRIR), Fremont County, WY, *Wait Period Ends:* 10/20/2008, *Contact:* Ray Nation 307–332–3718.

EIS No. 20080360, Draft EIS, NOA, 00, Amendment 1 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan, (FMP), Updating and Revising Essential Fish Habitat (EFH) for Atlantic Highly Migratory Species (HMS) consider additional Habitat Area of Particular Concern (HAPC) and Analyze Fishing Impacts, Chesapeake Bay, MD, Delaware Bay, DE, Great Bay, NJ and Outer Bank off NC, *Comment Period Ends:* 11/18/2008, *Contact:* Margo Schulze-Haugen 301–713–2347.

EIS No. 20080361, Draft Supplement, USA, HI, Makua Military Reservation (MMR) Project, Proposed Military Training Activities, To Conduct the Necessary Type, Level, Duration, and Intensity of Live-Fire and other Military Training Activities, in Particular Company-Level Combined-Arms, Live-Fire Exercises (CALFEX), 25th Infantry Division (Light) and US Army, HI, *Comment Period Ends:* 11/03/2008, *Contact:* Dennis Drake 808–656–3152.

EIS No. 20080362, Final EIS, AFS, CO, Durango Mountain Resort Improvement Plan, Special-Use-Permits, Implementation, San Juan National Forest, La Plata and San Juan Counties, CO, *Wait Period Ends:* 10/20/2008, *Contact:* Richard Speegle 970–375–3310.

EIS No. 20080363, Final EIS, AFS, CA, Modoc National Forest Noxious Weed Treatment Project, Proposes to Implement a Control and Eradication Project, Lassen, Modoc and Siskiyou Counties, CA, *Wait Period Ends:* 10/20/2008, *Contact:* Robert Haggard 530–233–8840.

Amended Notices

EIS No. 20080296, Final EIS, FHW, TX, Grand Parkway (State Highway 99) Selected the Preferred Alternative Alignment, Segment F–2 from SH 249 to IH 45, Right-of-Way Permit and U.S. Army COE Section 404 Permit, Harris County, TX, *Wait Period Ends:* 11/07/2008, *Contact:* Justin Ham 512–536–5963.

Revision to FR Notice Published 08/08/2008. Extending Wait Period from 09/17/2008 to 11/07/2008.

EIS No. 20080322, Final EIS, NRC, GA, Vogtle Electric Generating Plant Site, Early Site Permit (ESP), for the Construction and Operation of a new Nuclear Power Generating Facility Application Approval, Burke County, GA NUREG 1872, *Wait Period Ends:* 10/20/2008, *Contact:* Mark D. Notich 301–415–3053.

Revision to FR Notice Published 08/22/2008: Due to Agency submitting Errata to the Final EIS, the Wait Period will change from 9/22/2008 to 10/20/2008.

Dated: September 16, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–21956 Filed 9–18–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2008–0179; FRL–8717–6]

Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Proposed Yazoo Backwater Area Pumps Project in Issaquena County, MS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice of EPA's Final Determination pursuant to section 404(c) of the Clean Water Act to prohibit the specification of subject wetlands and other waters of the United States in Issaquena County, MS, as a disposal site for the discharge of dredged or fill material for the purpose of construction of the proposed Yazoo Backwater Area Pumps Project, i.e., Plan 5 in the U.S. Army Corps of Engineers' (the Corps) Final Supplemental Environmental Impact Statement (FSEIS) for the Yazoo Backwater Area Project, as well as FSEIS Plans 3, 4, 6, and 7, and Modified Plan 6 (proposed by the Corps after publication of the FSEIS). EPA's determination is based upon a finding that the discharge of dredged or fill material associated with the construction and operation of these projects would result in unacceptable adverse effects on fishery areas and wildlife.

DATES: *Effective Date:* The effective date of the Final Determination is August 31, 2008.

ADDRESSES: U.S. Environmental Protection Agency, Office of Water, Wetlands Division, Mail code 4502T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. EPA has established a docket for this action under Docket ID No. EPA–R04–OW–2008–0179. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Ms. Tanya A. Code at (202) 566–1063 or by e-mail at *code.tanya@epa.gov* or Mr. Palmer F. Hough at (202) 566–1374 or by e-mail at *hough.palmer@epa.gov*. Additional information and copies of EPA's Final Determination are available at the following Web site: *http://www.epa.gov/404c/*.

SUPPLEMENTARY INFORMATION: Section 404(c) of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) authorizes EPA to prohibit, restrict, or deny the specification of any defined area in waters of the United States (including wetlands) as a disposal site for the discharge of dredged or fill material whenever it determines, after notice and opportunity for public hearing, that such discharge into waters of the United States will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

EPA's regulations for implementing section 404(c) are set forth in 40 CFR part 231. Four major steps in the process are: (1) The Regional Administrator's notice to the U.S. Army Corps of Engineers (the Corps), the property owner, and the applicant (and/or project proponent) of the intention to initiate the section 404(c) process; (2) the Regional Administrator's publication of a Proposed Determination to withdraw, deny, restrict, or prohibit the use of the site, soliciting public comment and offering an opportunity for a public hearing; (3) the Regional Administrator's recommendation to the Assistant Administrator for Water at EPA Headquarters to withdraw, deny, restrict, or prohibit the use of the site (Recommended Determination); and, (4) the Assistant Administrator for Water's Final Determination to affirm, modify, or rescind the Regional recommendation.

Pursuant to section 404(c), EPA initiated a CWA section 404(c) review of the proposed Yazoo Backwater Area Pumps Project on February 1, 2008. The Yazoo Backwater Area Pumps Project is a Corps Civil Works project designed to address flooding concerns in a 630,000 acre area situated between the Mississippi and Yazoo Rivers in west-central Mississippi (Yazoo Backwater Area). The project is represented as Plan 5 in the Corps' FSEIS (published in November 2007). The primary component of this project is a 14,000 cubic feet per second (cfs) pumping station that would pump surface water out of the Yazoo Backwater Area during high water events on the Mississippi River. The project also includes 10,662 acres of reforestation of agricultural land to compensate for the adverse environmental impacts associated with the project, and up to 40,571 acres of reforestation of agricultural land to provide potential environmental benefits.

According to the Corps, the Yazoo Backwater Area contains between 150,000 to 229,000 acres of wetlands, as well as an extensive network of streams, creeks, and other aquatic resources. Extensive information collected on the Yazoo Backwater Area demonstrates that it includes some of the richest wetland and aquatic resources in the Nation. These include a highly productive floodplain fishery, substantial tracts of highly productive bottomland hardwood forests that once dominated the Lower Mississippi River Alluvial Valley (LMRAV), and important migratory bird foraging grounds. These wetlands provide important habitat for an extensive variety of wetland dependent animal and plant species, including the federally protected Louisiana black bear and pondberry plant. In addition to serving as critical fish and wildlife habitat, project area wetlands also provide a suite of other important ecological functions. These wetlands protect and improve water quality by removing and retaining pollutants, temporarily store surface water, maintain stream flows, and support aquatic food webs by processing and exporting significant amounts of organic carbon. As stated in the FSEIS, ''The lands in the lower Mississippi Delta are noted for high value fish and wildlife resources. The area serves as an integral part of the economic and social life of local residents and sportsmen from around the Nation'' (FSEIS, Appendix 1—Mitigation, page 1–29).

The construction and operation of the proposed pumps would dramatically alter the timing, and reduce the spatial extent, depth, frequency, and duration of time that wetlands within the project area are inundated. After extensive evaluation of the record for this project, EPA has determined that these large-scale hydrologic alterations would significantly degrade the critical ecological functions provided by approximately 67,000 acres of wetlands in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources.

During the initial consultation period with the Corps and the Mississippi

Board of Levee Commissioners (the project sponsor), the Corps offered two alternatives to the proposed project to reduce wetland impacts. One of these alternatives is Plan 6 from the FSEIS, and the other is a modified version of Plan 6. Both of these alternatives retain the 14,000 cfs pump station, but include modifications to the pump-on elevation and the amount of compensatory mitigation and reforestation as compared to Plan 5. After discussions with the Corps and following careful consideration of the two alternatives, EPA is concerned that neither proposal would reduce impacts to an acceptable level.

In March 2008, EPA Region IV published a proposal (i.e., Proposed Determination) to prohibit or restrict the use of certain waters of the United States as disposal sites for the discharge of dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Pumps Project (73 FR 14806, March 19, 2008). EPA Region IV solicited public comments on the Proposed Determination until May 5, 2008. EPA received approximately 47,600 written comment letters, including approximately 1,500 individual comment letters and 46,100 mass mailers. Nearly all of the comment letters (99.9 percent) urged EPA to prohibit discharges to waters of the United States associated with the proposed pumps project. A public hearing was held in Vicksburg, Mississippi, on April 17, 2008, in which approximately 500 people participated. A total of 67 people provided oral statements, including one representative from the Corps' Vicksburg District and four individuals representing the project sponsor. Of the remaining 62 people who provided oral statements, 32 people spoke in opposition to the proposed pumps project, 29 spoke in favor of the pumps project and one person did not specify a position. In total, approximately 463 residents of the state of Mississippi submitted written comments to EPA or spoke at the public hearing. Of these, 417 expressed support for EPA's proposal and 45 favored construction of the pumps. Within the Yazoo Backwater Area, a total of 31 residents expressed an opinion on the project either at the public hearing, in written comments, or both. Of these 31, four expressed support for EPA's position, 26 expressed support for construction of the pumps, and one did not express an opinion.

On July 2, 2008, EPA Region IV submitted to EPA Headquarters its Recommended Determination to prohibit the specification of certain wetlands and other waters of the United States within Humphreys, Issaquena, Sharkey, Warren, Washington, or Yazoo County, in the state of Mississippi as a disposal site for the discharge of dredged or fill material for the purpose of construction of the proposed Yazoo Backwater Area Project, or any similar pump project in the Yazoo Backwater Area that would result in unacceptable adverse effects on fishery areas and wildlife.

EPA Region IV based its recommendation upon a conclusion that the proposed discharge of fill material into 43.6 acres of wetlands and other waters of the United States in connection with the construction of the pumping station and the subsequent secondary impacts, would result in unacceptable adverse effects on at least 67,000 acres of wetlands and other waters of the United States and their associated wildlife and fisheries resources. Additionally, EPA Region IV expressed concern that the proposed mitigation would not fully compensate for the potential impacts of the project, as identified in the FSEIS, and that the suggested environmental benefits associated with the project's reforestation component have not been substantiated. EPA Region IV also stated that the Corps did not evaluate the proposed project's adverse impacts on up to 24,000 acres of wetlands outside the FSEIS's wetland assessment area. EPA Region IV also expressed its belief that there are likely to be less environmentally damaging practicable alternatives available to achieve the improved flood protection goals of the proposed Yazoo Backwater Area Project.

The U.S. Fish and Wildlife Service (FWS), in its comments on the Proposed and Recommended Determinations, concurred with EPA Region IV's conclusion that the proposed project would result in extensive and unacceptable adverse effects on wildlife and fishery areas. FWS also highlighted its concerns that the proposed project would significantly degrade the wildlife habitat provided by its four National Wildlife Refuges located within the Yazoo Backwater Area—reducing the capability of these refuges to achieve the purpose and intent for which they were Congressionally established.

EPA prepared the Final Determination based on an evaluation of EPA Region IV's Recommended Determination, and review and consideration of the administrative record, including information in the Corps' 2007 FSEIS, public comments received in writing and at the public hearing, and submissions by other federal and state agencies. In addition, the Final Determination reflects the careful review and full consideration of written information that was subsequently submitted and made part of the record, as well as information conveyed to EPA by the Department of the Army and the project sponsor during the EPA Headquarters section 404(c) consultation process.

EPA's Final Determination concludes that the discharge of dredged or fill material in connection with the construction of the proposed Yazoo Backwater Area Pumps Project (i.e., Plan 5 from the FSEIS), as well as the two alternative proposals offered by the Corps in February 2008 (i.e., Plan 6 from the FSEIS and Modified Plan 6) and subsequent operation of the 14,000 cfs pumping station would result in unacceptable adverse effects on fishery areas and wildlife. The administrative record developed in this case fully supports the conclusion that, as a result of alterations to the spatial extent, depth, frequency, and duration of inundation of wetlands within the project area, the proposed projects would significantly degrade the critical ecological functions provided by approximately 28,400 to 67,000 acres of wetlands (i.e., the range of wetland impacts as a result of Plan 5, Plan 6, and Modified Plan 6) in the Yazoo Backwater Area, including those functions that support wildlife and fisheries resources. Although not proposed to go forward, FSEIS Plans 3, 4, and 7, which also include a 14,000 cfs pumping station are expected to result in wetland impacts between approximately 28,400 and 118,400 acres (see FSEIS Main Report, Table 17, page 1–20). EPA has determined that each of these alternatives would also result in unacceptable adverse effects on fishery areas and wildlife. EPA does not believe that these adverse impacts can be adequately compensated for by the proposed mitigation, and are inconsistent with the requirements of the CWA. Further, these impacts should be viewed in the context of the significant cumulative losses across the Lower Mississippi River Alluvial Valley (LMRAV), which has already lost over 80 percent of its bottomland forested wetlands, and specifically in the Mississippi Delta where the proposed project would significantly degrade important bottomland forested wetlands.

Based on these findings, the Final Determination prohibits, pursuant to section 404(c) of the CWA, the specification of the subject wetlands and other waters of the United States as described in the FSEIS as a disposal site for the discharge of dredged or fill material for the purpose of construction

of FSEIS Plans 3 through 7, and Modified Plan 6. The adverse effects associated with the prohibited projects are the result of a combination of operational factors including the capacity of the pumping station and its associated pump-on elevations. While the Final Determination prohibits the construction of FSEIS Plans 3 through 7, and Modified Plan 6, the data supporting the Final Determination indicates that derivatives of the prohibited projects that involve only small modifications to the operational features or location of these proposals would also likely result in unacceptable adverse effects and would generate a similar level of concern and review by EPA.

EPA continues to support the goal of providing improved flood protection for the residents of the Mississippi Delta; however, it believes that this vital objective can be accomplished consistent with ensuring effective protection for the area's valuable natural resources. EPA is committed to participating in discussions with other federal and state agencies, and the public, concerning the best way to provide flood protection while protecting wetlands and other natural resources.

Dated: September 11, 2008.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E8–22002 Filed 9–18–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8717–4; Docket ID No. EPA–HQ–ORD–2008–0547]

Draft Problem Formulation for Human Health Risk Assessments of Pathogens in Land-Applied Biosolids

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Notice of Public Comment Period and External Peer-Review Workshop.

SUMMARY: The U.S. EPA is announcing the release of a pre-dissemination, external review draft titled, ''Problem Formulation for Human Health Risk Assessments of Pathogens in Land-applied Biosolids'' (EPA/600/R–08/035A), for both public comment and external peer review. The public comment period will span 45 days. Eastern Research Group (ERG), under contract with EPA, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the draft document. Both the U.S. EPA and ERG invite the public to register to attend this workshop. Additional information regarding both submissions and registration is provided in the remainder of the document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. In addition to consideration by EPA, all public comments submitted in accordance with this notice will also be forwarded to the external peer-review panel for review prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The 45-day public comment period will begin September 19, 2008 and end November 3, 2008. Technical comments should be provided in writing and must be received by the U.S. EPA by November 3, 2008. Comments received after this date will only be considered if time permits and might not be included for discussion at the external peer-review workshop. The external peer-review workshop will be held on November 19, 2008, starting at 8:30 a.m. and adjourning by 5 p.m.

ADDRESSES: The external peer-review workshop will be held at U.S. EPA's Andrew W. Briedenbach Environmental Research Center (AWBERC), Rooms 120–126, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. ERG is organizing, convening, and conducting the peer-review workshop. Registration to attend the external review workshop must be completed prior to November 12, 2008, via one of the following methods:

- Online via the Internet—*https://www2.ergweb.com/projects/conferences/peerreview/register-biosolids.htm*
- Telephone—781–674–7374 (registration line).
- Sending an e-mail to *meetings@erg.com*, subject line ''Biosolid Peer Review.'' When making reservations to attend the external peer-review workshop, individuals must indicate whether they plan to provide brief oral comments to the external review panel. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Electronic copies of the external review draft document and the U.S. EPA Peer-Review Charge can be accessed at that National Center for Environmental Assessment (NCEA)'s homepage under the ''Recent Additions'' and the ''Data and Publications'' menus at *http://www.epa.gov/ncea*. Copies are not available from ERG.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION, CONTACT: Questions about the public comment period can be directed to the OEI Docket Center (telephone—202–566–1752; Fax: 202–566–1753; or e-mail—*ORD.Docket@epa.gov*).

Questions about the external peer-review workshop can be directed to ERG, through Kate Schalk (telephone—781–674–7374, or e-mail—*Kate.Schalk@erg.com*).

Questions about the draft document can be directed to Michael Troyer, NCEA, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, OH 45268, Telephone—513–569–7399; or e-mail—*troyer.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

In January 2004, the U.S. EPA released a final Action Plan for setting new priorities for the biosolids program, which included the Agency's response to the National Research Council's 2002 report entitled, *Biosolids Applied to Land: Advancing Standards and Practice*. This current, external review draft document is an important step in the Agency's response because it aims to improve problem formulation and strengthen the analysis plans associated with the conduct of quantitative microbial risk assessments on land-applied biosolids.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2008–0547, by one of the following methods:

- E-mail—*ORD.Docket@epa.gov*;
- Fax—202–566–1753;
- Mail—Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or
- Hand Delivery—The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The OEI Docket Center Public Reading Room is open from 8:30

a.m. to 4:30 p.m., Monday through Friday, excluding national holidays.

The OEI Docket Center telephone number is 202–566–1744. Special arrangements should be made for deliveries of boxed information.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0547. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at www.regulations.gov, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 11, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–21959 Filed 9–18–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8717–7]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2008 Fall Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held on November 19, 2008 starting at 9 a.m. and ending at 5 p.m.

ADDRESSES: Tremont Grand Historic Venue, 225 North Charles Street, Baltimore, Maryland 21201; (443) 573–8444.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; *e-mail: ozone@otcair.org*; *Web site: http://www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport commission is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by *e-mail: ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: September 11, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–21963 Filed 9–18–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation; Motor Vehicle Management; Notice of GSA Bulletin FMR B–19

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: This notice announces GSA Federal Management Regulation (FMR) Bulletin B–19. This bulletin provides guidance to Federal agencies on increasing fuel efficiency for the Federal motor vehicle fleets. GSA Bulletin FMR B–19 may be found at *www.gsa.gov/fmrbulletin*.

DATES: The bulletin announced in this notice became effective on August 29, 2008.

FOR FURTHER INFORMATION CONTACT Janet Dobbs, Office of Governmentwide Policy (M), Office of Travel, Transportation, and Asset Management (MT), General Services Administration at (202) 208–6601 or via e-mail at *janet.dobbs@gsa.gov*. Please cite FMR Bulletin B–19.

SUPPLEMENTARY INFORMATION:

A. Background

Federal agencies are required to obtain fuel efficient vehicles in accordance with Subpart A of Federal Management Regulation (FMR) part 102–34, *Motor Vehicle Management*. The Energy Policy Act requires agencies to acquire alternative fuel vehicles, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, requires agencies to decrease petroleum consumption and increase alternative fuel use. Also, the Energy Independence and Security Act of 2007 set forth efforts to enhance energy conservation and efficiency. Increasing fuel efficiency will help agencies save on fuel costs while also helping them to meet environmental mandates.

This notice announces GSA Bulletin FMR B–19 that provides guidance on

increasing fuel efficiency for the Federal motor vehicle fleets.

B. Procedures

Bulletins regarding motor vehicle management are located on the Internet at *www.gsa.gov/fmrbulletin* as Federal Management Regulation (FMR) bulletins.

Dated: August 29, 2008.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. E8–21921 Filed 9–18–08; 8:45 am]

BILLING CODE 6820–14–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Notice of Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, October 20, 2008, through Wednesday, October 22, 2008, at Doubletree Hotel Crystal City, located at Arlington, Virginia. The sessions will take place from 8 a.m. to 5 p.m. on Monday through Wednesday. The meeting will be held at the Doubletree Hotel Crystal City, 300 Army Navy Drive, Arlington, Virginia. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Doubletree Hotel Crystal City will be at the Government rate of $233.00 (plus applicable state and local taxes, currently 10.25%) a night for a single or double. The Doubletree Hotel Crystal City is in compliance with the requirements of Title III of the Americans With Disabilities Act and meets all Fire Safety Act regulations.

Robert C. Tapella,

Public Printer of the United States.

[FR Doc. E8–21608 Filed 9–18–08; 8:45 am]

BILLING CODE 1520–01–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 the proposed information collection project: ''Establishing Benchmarks for the Medical Office Survey on Patient Safety.'' 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 November 18, 2008.

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

''Establishing Benchmarks for the Medical Office Survey on Patient Safety''.

The ambulatory Medical Office Survey on Patient Safety (SOPS), an adapted version of AHRQ's Hospital Survey on Patient Safety Culture (HSOPSC), was developed in 2005 to measure specific components of patient safety culture in the ambulatory setting. A pilot study (OMB #0935–0131) assessed and refined the psychometric properties of specific survey items, and a final version of SOPS is now ready for public dissemination. However, in order for the survey to be most useful to ambulatory medical offices in identifying areas of relative strength and weakness in patient safety culture, reliable benchmarks to which a practice's responses can be compared need to be established.

AHRQ has determined, through discussions with potential end-users of SOPS, including leaders of physician and other provider groups, that an ambulatory practice is unlikely to have confidence in SOPS benchmarks unless the benchmarking data are based on responses derived from offices with similar characteristics. Office characteristics thought to have a potential effect on SOPS responses include practice size, location, provider specialty, and use of electronic information technology. A separate survey to collect information about these practice characteristics has been developed and was tested and refined as part of the pilot study.

In order to establish SOPS benchmarks that can be tailored with respect to specific practice-related characteristics, survey responses from a large sample of practices stratified by these characteristics are required. AHRQ therefore intends to recruit and administer SOPS to ambulatory medical offices that have been selected on the basis of practice characteristics. In addition, AHRQ intends to collect from these practices evaluative information about administrative barriers and facilitators to survey participation as well as a description of how the office used (or plans to use) the survey results to enhance patient safety culture. These data will inform future efforts by AHRQ to maximize the use of SOPS and the utility/value of survey results to ambulatory practices across the country.

This project is being conducted pursuant to AHRQ's statutory mandates to (1) promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, including methods for measuring quality and strategies for improving quality (42 U.S.C. 299(b)(1)(F)) and (2) conduct and support research on health care and on systems for the delivery of such care, including activities with respect to quality measurement and improvement (42 U.S.C. 299a(a)(2)).

Methods of Collection

A purposive sample of 350 outpatient medical offices will be identified and recruited. The goal is for the sample to be proportionately distributed with regard to six practice characteristics: geographical location of offices; office size (number of physicians and employed staff); provider specialty; type of practice ownership; extent to which electronic information tools are used; and demographics of patients being served. All physicians and employed staff in the practices will be asked to complete the SOPS. Additionally, one office manager for the practice will be asked to complete the Office Characteristics Survey. Since higher response rates have been demonstrated when paperbased (compared to electronic) surveys are administered to busy ambulatory clinicians, SOPS will be administered in paper form. Standard non-response follow-up techniques such as reminder postcards and distribution of a second survey will be used. Additionally, all respondents will subsequently be asked to complete a web-based evaluation assessing barriers and facilitators to survey completion,

and the intended use(s) of survey data. Individuals and organizations contacted will be assured of the confidentiality of their replies under 42 U.S.C. 924(c).

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the medical offices' time to participate in this one-time data collection. It is anticipated that an average of 20 persons (about 6 physicians and 14 staff) in each of the 350 medical offices will respond to the survey, resulting in 7000 responses (approximately 2,000 physicians and 5,000 staff). The Survey on Patient Safety and the Post-Survey Evaluation will be completed by both physicians and staff, while the Office Characteristics Survey will be completed by the office manager at each of the 350 participating medical offices. Each survey will require approximately 15 minutes to complete. The total annualized burden for the medical offices to participate in this project is estimated to be 3,588 hours.

Exhibit 2 shows the estimated cost burden to participate in this project. The total annualized cost burden, based on the burden hours and hourly rates of the physicians and staff, is estimated at $99,368.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Survey name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Survey on Patient Safety (SOPS)	350	20	15/60	1,750
Office Characteristics Survey	350	1	15/60	88
Post-Survey Evaluation	350	20	15/60	1,750
Total	1,050	na	na	3,588

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Survey name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Survey on Patient Safety (SOPS)	350	1,750	$27.44	$48,020
Office Characteristics Survey	350	88	37.82	3,328
Post-Survey Evaluation	350	1,750	27.44	48,020
Total	1,050	3,588	na	99,368

* For the SOPS and Post-Survey Evaluation the wage rate is the national average wage for ''healthcare practitioner and technical occupations.'' For the Office Characteristics Survey the hourly wage is the national average wage for ''medical and health services managers.'' National Compensation Survey: Occupational Wages in the United States 2006, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost to the Government for conducting this research will be approximately $340,000. This estimate includes the costs of medical office identification and recruitment; data collection and aggregation; shipping, inputting and cleaning of data; analysis and report writing.

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 OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 9, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–21822 Filed 9–18–08; 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: ''Conducting Measurement Activities in Support of the AHRQ Health IT Initiative.'' 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.

DATES: Comments on this notice must be received by November 18, 2008.

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

Conducting Measurement Activities in Support of the AHRQ Health IT Initiative

Over the past 35 years, AHRQ and its predecessor agencies have made adoption of health information technology (IT) an agency priority. In addition, AHRQ-supported research has helped to demonstrate the potential of health IT to enhance health care quality and patient safety. As the lead federal research agency on the quality, safety, efficiency, and effectiveness of health care in America, AHRQ plays a central role in efforts to increase the adoption of health IT.

Consistent with its mission, AHRQ proposes to develop measures of four indicators of performance of its health IT portfolio, namely:

1. Reduction in medication errors due to adoption of electronic prescribing systems;
2. The number of persons who can access their medication information online;
3. The number of clinicians who can electronically access evidence-based prevention or treatment information; and
4. The number of clinician organizations who have adopted evidence-based decision support technologies.

While secondary data are available to calculate measures 1, 3 and 4 described above, no national data exist for measure #2. Thus, this proposed information collection relates to measure #2: The number of persons who can access their medication information online.

This project is being conducted pursuant to AHRQ's statutory mandates to conduct and support research, evaluations and initiatives to advance information systems for health care improvement (42 U.S.C. 299b–3) and to promote innovations in evidence-based health care practices and technologies by conducting and supporting research on the development, diffusion, and use of health care technology (42 U.S.C. 299b–5(a)(1)).

Method of Collection

The data will be collected using a random-digit-dial (RDD) telephone survey of the U.S. adult population. To ensure a representative geographic distribution of the sample, the total sample will be allocated to each Census region in proportion to the total number of adults in each region. The survey will be administered in both English and Spanish.

Estimated Annual Respondent Burden

Exhibit 1 presents the estimated annualized burden hours for the respondents' time to participate in this project. The telephone survey will be completed by 1,000 respondents and is expected to require 12 minutes to complete. The cognitive pretest interviews, which are used to refine and validate the survey instrument, will be completed by 18 respondents (9 English-speaking and 9 Spanish-speaking) and are expected to last one hour. The total burden hours are estimated to be 218 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents' time to participate in this project. The total cost burden is estimated to be $4,205.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Telephone Survey	1000	1	12/60	200
Cognitive Pretest Interview	18	1	1	18
Total	1018	na	na	218

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Telephone Survey	1000	200	$19.29	$3,858
Cognitive Pretest Interview	18	18	19.29	347
Total	1018	218	na	4,205

* Based upon the mean of the average wages, National Compensation Survey: Occupational Wages in the United States 2006, "U.S. Department of Labor, Bureau of Labor Statistics."

Estimated Annual Costs to the Federal Government

We are requesting approval for a one-time, one year, data collection effort. The estimated cost of this data collection is $310,067, which includes the cost of developing, administering and analyzing the survey. Exhibit 3 details labor hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expenses that would not have been incurred without this collection of information.

EXHIBIT 3. ANNUAL COSTS FOR THE ESTIMATE OF THE NUMBER OF PERSONS WHO CAN ACCESS THEIR MEDICATION INFORMATION ONLINE

	Annual cost
Labor:	
1,514 hours plus 42% fringe	$123,998
Data collection:	

EXHIBIT 3. ANNUAL COSTS FOR THE ESTIMATE OF THE NUMBER OF PERSONS WHO CAN ACCESS THEIR MEDICATION INFORMATION ONLINE—Continued

	Annual cost
Interviewer training, sample purchase, survey administration, data entry, toll calls	30,274
Other direct costs:	
Computer charge, telephone/fax/teleconference, printing and duplication, travel	28,418
Indirect costs:	
Regular overhead, 46.5%; G&A	101,775
Contract Fee	25,602
Total	$310,067

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, 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: September 9, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–21824 Filed 9–18–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–8003]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Home and Community Based Waiver Requests and Supporting Regulations in 42 CFR 440.180 and 441.300–310; *Use*: Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost and utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements. *Form Number*: CMS–8003 (OMB# 0938–0449); *Frequency:* Occasionally; *Affected Public*: State, Local or Tribal Governments; *Number of Respondents*: 50; *Total Annual Responses*: 136; *Total Annual Hours*: 8,010.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *October 20, 2008*.

OMB, Office of Information and Regulatory Affairs, *Attention*: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, *Fax Number*: (202) 395–6974.

Dated: September 11, 2008.

Michelle Shortt,

Director, Regulations Development Group. Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–21906 Filed 9–18–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Structured Product Labeling Content of Labeling and Electronic Drug Establishment Registration and Drug Listing for the Biologics Industry; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Structured Product Labeling (SPL) Content of Labeling and Electronic Drug Establishment Registration and Drug Listing for the Biologics Industry.'' The purpose of the public workshop is to provide the biologics industry with guidance on submitting to FDA content of labeling in SPL format, present an overview of FDA's voluntary pilot program for electronic submission of drug establishment registration and drug

listing information under the regulations, and exhibit vendor SPL authoring tools that may be used in the creation and manipulation of SPL content of labeling.

Date and Time: The public workshop will be held on November 17, 2008, from 8:30 a.m. to 4 p.m.

Location: The public workshop will be held at the Universities at Shady Grove, Multipurpose Room, Building II, 9630 Gudelsky Dr., Rockville, MD 20850.

Contact Person: Donna Lipscomb, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079; e-mail: *spl@fda.hhs.gov* (Subject line: CBER SPL Public Workshop).

Registration: Mail, FAX, or e-mail your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by October 30, 2008. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space-available basis beginning at 8 a.m.

Vendor Registration: Vendors wishing to exhibit their SPL authoring tools at this public workshop must register and submit their registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by October 30, 2008, via e-mail to *spl@fda.hhs.gov*.

If you need special accommodations due to a disability, please contact Donna Lipscomb (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop to provide the biologics industry with guidance on submitting to FDA content of labeling in SPL format and to present an overview of FDA's voluntary pilot program for electronic submission of drug establishment registration and drug listing information under the regulations in part 207 (21 CFR part 207).

FDA's Center for Biologics Evaluation and Research (CBER) has stated in a memorandum, posted on July 11, 2008, to Docket No. FDA–1992–S–0039 (formerly 1992S–0251), that beginning October 15, 2008, SPL in XML (extensible markup language) is the acceptable presentation in electronic format for the submission of content of labeling that CBER can process, review, and archive. This applies to the content of labeling with original submissions, supplements, and annual reports. Individuals may electronically access CBER's notification on the submission of SPL content of labeling at *http://www.fda.gov/oc/datacouncil/spl.html*.

In the **Federal Register** of July 11, 2008 (73 FR 39964), FDA announced the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.'' This draft guidance established a pilot program for industry to voluntarily submit drug establishment registration and drug listing information in SPL format. The draft guidance only applies to drug establishments that currently register their establishments and list their products under the regulations in part 207 and explains how to transition from submitting the required information on paper to submitting the required information using the SPL standard. The draft guidance also describes how to voluntarily submit additional useful, but not required, information that currently is often included by industry in their registration and listing paper submissions. FDA plans to complete the voluntary pilot program and begin receiving drug establishment and drug listing information only electronically and only in SPL format (including labeling) beginning June 1, 2009, unless a waiver is granted.

This public workshop will feature presentations by FDA experts on SPL content of labeling and electronic drug establishment registration and drug listing. In addition, registrants will have access to a vendor exhibition of SPL authoring tools.

Dated: September 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21968 Filed 9–18–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0457]

Draft Guidance for Industry and Food and Drug Administration Staff; Clinical Investigations of Devices Indicated for the Treatment of Urinary Incontinence; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Clinical Investigations of Devices Indicated for the Treatment of Urinary Incontinence.'' This draft guidance document describes FDA's proposed recommendations for clinical investigations of medical devices indicated for the treatment of urinary incontinence. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by December 18, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Clinical Investigations of Devices Indicated for the Treatment of Urinary Incontinence'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4130.

SUPPLEMENTARY INFORMATION:

I. Background

Urinary incontinence is defined as the involuntary loss of urine. This draft guidance is intended to assist device manufacturers who plan to conduct clinical investigations of devices intended to treat urinary incontinence in support of premarket approval (PMA) applications or premarket notification (510(k)) submissions. The draft guidance describes FDA's proposed recommendations for human clinical trials that involve the use of any type of urinary incontinence device, including, but not limited to, urological clamp for males; nonimplanted, peripheral and

other electrical continence devices; protective garment for incontinence; surgical mesh; electrosurgical cutting and coagulation device and accessories; perineometer; gynecologic laparoscope and accessories; and vaginal pessary.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on clinical investigations of devices intended to treat urinary incontinence. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Clinical Investigations of Devices Indicated for the Treatment of Urinary Incontinence,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1636 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; and the collections of information in parts 50 and 56 have been approved under OMB control number 0910–0130.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: September 2, 2008.

Daniel G. Schultz,

Director, Center for Devices and Radiological Health.

[FR Doc. E8–21971 Filed 9–18–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0394]

Guidance for Industry: Regulation of Genetically Engineered Animals Containing Heritable rDNA Constructs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document (GFI#187) entitled ''Regulation of Genetically Engineered Animals Containing Heritable rDNA Constructs.'' This draft guidance is intended to clarify FDA's requirements and recommendations for producers and developers of genetically engineered (GE) animals and their products. The draft guidance describes how the new animal drug provisions of the Federal Food, Drug, and Cosmetic Act (the act) apply with respect to GE animals, including FDA's intent to exercise enforcement discretion regarding requirements for certain GE animals.

Elsewhere in this same issue of the **Federal Register**, the Animal and Plant Health Inspection Service (APHIS) is soliciting public comment on any potential implications of activities such as the importation or interstate movement of GE animals on the health of the U.S. livestock population under the authority of the Animal Health Protection Act (AHPA).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by November 18, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Larisa Rudenko, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8247, e-mail: *larisa.rudenko@hhs.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

For the purpose of this guidance, FDA defines ''genetically engineered (GE) animals'' as those animals modified by recombinant DNA (rDNA) techniques. The term GE animal can refer to both animals with heritable rDNA constructs and animals with non-heritable rDNA constructs (e.g., those modifications intended to be used as gene therapy). Although much of this guidance will be relevant to non-heritable rDNA constructs, and FDA intends to regulate non-heritable constructs in much the

same way as described in this guidance for heritable constructs, this guidance only pertains to GE animals containing heritable rDNA constructs. We may issue a separate guidance on the regulation of GE animals bearing non-heritable constructs to discuss when those constructs would be under FDA jurisdiction and the kinds of information that would be relevant for FDA's review.

FDA's authority over new animal drugs comes from the Federal Food, Drug, and Cosmetic Act. The definition of a drug, in section 201(g) of the act (21 U.S.C. 321(g)), includes ''articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;'' and ''articles (other than food) intended to affect the structure or any function of the body of man or other animals.'' The rDNA construct in a GE animal that is intended to affect the structure or function of the body of the GE animal, regardless of the intended use of products that may be produced by the GE animal, meets the act drug definition. The draft guidance describes how the new animal drug provisions of the act apply with respect to GE animals, including FDA's intent to exercise enforcement discretion regarding requirements for certain GE animals.

FDA is one of several Federal agencies that share regulatory oversight of GE organisms. In 1986, the Office of Science and Technology Policy (OSTP) under the Executive Office of the President published a policy document known as the Coordinated Framework for the Regulation of Biotechnology (the Coordinated Framework).[1] This policy document describes the system for coordinating the activities of the Federal agencies responsible for regulating all GE organisms.[2]

In addition to FDA's role in oversight of GE animals, APHIS is authorized, under the AHPA (7 U.S.C. 8301 *et seq.*), to protect the health of U.S. livestock by preventing the introduction and spread of livestock diseases and pests into and within the United States. Based on that authority, APHIS may broadly consider the potential effects of animals with GE traits on the health of the overall U.S. livestock population, while FDA is more focused on the direct effects of genetic engineering on individual animals based on its authority under the act. Given these complementary authorities, FDA and APHIS have been discussing their respective roles in overseeing GE animals for some time. In conjunction with FDA's release for public comment of its guidance on GE animals, APHIS is soliciting public comment in this same issue of the Federal Register on any potential implications of activities such as the importation or interstate movement of GE animals on the health of the U.S. livestock population.

[1]Coordinated Framework for the Regulation of Biotechnology: June 26, 1986; 51 FR 23302; *http://usbiotechreg.nbii.gov/CoordinatedFrameworkForRegulationOfBiotechnology1986.pdf*.

[2]In addition to discussing the regulatory responsibilities of these agencies for GE organisms and other products, the Coordinated Framework also discusses the responsibilities of agencies with jurisdiction over GE research (the National Institutes of Health, the National Science Foundation, the Environmental Protection Agency (EPA), and the U.S Department of Agriculture's (USDA's) Agricultural Research Service).

II. Significance of Guidance

This Level 1 draft guidance is being issued consistent with FDA's Good Guidance Practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information have been approved under OMB Control Nos. 0910–0032, 0910–0045, 0910–0117, and 0910–0284. FDA seeks public comment on the agency's determination that the previously approved collections of information referred to previously adequately account for the collections of information referenced in this guidance. Although the collections of information burden estimates previously approved by OMB were derived for new animal drug applications (NADAs) in general, FDA believes that such estimates are applicable to NADAs for GE animals. In particular, FDA previously determined that preparing the paperwork required for an NADA under 21 CFR 514.1 will take approximately 212 hours. Over the past 5 fiscal years, FDA has received an average of 19 NADAs per year.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cvm* or *http://www.regulations.gov*.

Dated: September 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21917 Filed 9–18–08; 8:45 am]

BILLING CODE 4160–01–S

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(cX4) 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: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: September 29–30, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Virology-B.

Date: October 2, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

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: Center for Scientific Review Special Emphasis Panel, Social Sciences and Population Studies R21s, R03s.

Date: October 3, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, 120 E. Lombard Street, Baltimore, MD 21202.

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oncology and Therapeutics.

Date: October 6, 2008.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Angela V. Ng, PhD, MBA., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Pathobiology.

Date: October 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Addiction and Memory.

Date: October 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychiatric Genetics.

Date: October 7, 2008.

Time: 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SAT Member Conflict.

Date: October 7, 2008.

Time: 2 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: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vector Biology.

Date: October 8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, 301–435–2398, *pughjohn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated, Review Group Developmental Brain Disorders Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *manospa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Genetics Study Section.

Date: October 9, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Meridien San Francisco, 333 Baftery Street, San Francisco, CA 94111.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biology of Development and Aging Integrated Review Group Development—1 Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Cathy Wedeen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1191, *wedeenc@csr.nih.gov.*

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: Center for Scientific Review Special Emphasis Panel, Academic-Industry Partnership in Cancer Imaging.

Date: October 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SRO Conflict: Biobehavioral Regulation, Learning and Ethology.

Date: October 10, 2008.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Deca, 4507 Brooklyn Avenue, NE., Seattle, WA 98105.

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mental Health and Neurodegenerative Disorders Members Conflict.

Date: October 14, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated, Review Group Bacterial Pathogenesis Study Section.

Date: October 15–16, 2008.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Mechanisms of Neurodegeneration.

Date: October 15, 2008.

Time: 9 a.m. to 12:01 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transplantation, Tolerance, and Tumor Immunity: Member Conflicts.

Date: October 15–16, 2008.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Systemic Injury by Environmental Exposure.

Date: October 16, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Native American Research Centers for Health.

Date: October 20–21, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, *khanm@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Ethical, Legal, and Social Implications of Human Genetics Study Section.

Date: October 20, 2008.

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

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Devices.

Date: October 20, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Devices and Bioengineering.

Date: October 20, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel Seattle, 1113 Sixth Avenue, Carlsbad, Seattle, WA 98101.

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: October 21, 2008.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Red Lion Hotel Seattle, 1415 Fifth Avenue, Seattle, WA 98101.

Contact Person: John Firrell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Addiction Prevention and Interventions.

Date: October 21, 2008.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Virology.

Date: October 22, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices, Auditory Devices, and Neuroprosthesis Small Business SEP.

Date: October 22–23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel and Suites, San Francisco Fisherman's Wharf,

550 North Point Street, San Francisco, CA 94133.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects—1 Study Section.

Date: October 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Manana Sukhareva, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Small Business: Medical Imaging.

Date: October 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Leonid V. Tsap, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, tsapl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology.

Date: October 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel and Suites, San Francisco Fisherman's Wharf, 550 North Point Street, San Francisco, CA 91433.

Contact Person: Aidan Hampson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampsona@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Bioanaytical Sciences Fellowships.

Date: October 23, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR: Risk Prevention and Health Behavior Across the Lifespan.

Date: October 23–24, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, Washington, DC 20036.

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alzheimer's Disease Pilot Clinical Trials.

Date: October 23, 2008.

Time: 12 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: Alfonso R. Latoni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Systems Small Business SEP.

Date: October 24–25, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel and Suites, San Francisco Fisherman's Wharf, 550 North Point Street, San Francisco, CA 94133.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1124, MSC 7846, Bethesda, MD 20892, 301–435–1049, *mckiegeo@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: September 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21808 Filed 9–18–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel Caloric Restriction.

Date: October 14, 2008.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Bldg., 7201 Wisconsin Avenue, Rm. 2C212, Bethesda, MD 20814. (Telephone Conference Call)

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Joint Aging and Osteoarthritis.

Date: October 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Sleep and Age.

Date: October 24, 2008

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Jeannette L Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, the Somatotropic Axis and Aging.

Date: November 4, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue,

2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Nursing Home Research.

Date: November 7, 2008.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Biodemographic Factors of Longevity I.

Date: November 14, 2008.

Time: 12:00 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21809 Filed 9–18–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

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

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

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, CDRC Conflicts.

Date: October 20, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21879 Filed 9–18–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0100]

The National Infrastructure Advisory Council

AGENCY: Directorate for National Protection and Programs, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, October 14, 2008 at the J.W. Marriott's Salons E and F, 1331 Pennsylvania Avenue, Washington, DC 20004.

DATES: The National Infrastructure Advisory Council will meet Tuesday, October 14, 2008 from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business.

For additional information, please consult the NIAC Web site, *www.dhs.gov/niac,* or contact Timothy McCabe by phone at 703–235–2888 or by e-mail at *timothy.mccabe@associates.dhs.gov.*

ADDRESSES: The meeting will be held at the J.W. Marriott's Salons E and F, 1331 Pennsylvania Avenue, Washington, DC 20004. While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy J. Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528. Written comments should reach the contact person listed no later than October 7, 2008. Comments must be identified by DHS–2008–0100 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: matthew.sickbert@associates.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 703–235–3055.
- *Mail:* Nancy J. Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Infrastructure Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Infrastructure Advisory Council shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The National Infrastructure Advisory Council will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The October 14, 2008 meeting will include a final report from the Critical Partnership Strategic Assessment Working Group and a status report from the Frameworks for Dealing With Disasters and Related Interdependencies Working Group.

The meeting agenda is as follows:

I. Opening of Meeting	Nancy J. Wong, Designated Federal Officer (DFO), NIAC, Department of Homeland Security (DHS).
II. Roll Call of Members	Nancy J. Wong, DFO, NIAC, DHS.
III. Opening Remarks and Introductions	NIAC Chairman Erle A. Nye, Chairman Emeritus, TXU Corp. NIAC Vice Chairman, Alfred R. Berkeley III, Chairman and CEO, Pipeline Trading, LLC. Michael Chertoff, Secretary, DHS (invited).
Participating but not Expected to Make Remarks:	Paul A. Schneider, Deputy Secretary, DHS (invited). Robert D. Jamison, Under Secretary for the National Protection and Programs Directorate (invited). Scott Charbo, Deputy Under Secretary for the National Protection and Programs Directorate, DHS (invited). Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS (invited). Dr. Kevin J. Reardon, Deputy Assistant Secretary for Infrastructure Protection, DHS (invited). Kenneth L. Wainstein, Assistant to the President for Homeland Security/Counter Terrorism (APHS/CT), Homeland Security Council (invited).
IV. Approval of July 2008 Minutes	NIAC Chairman Erle A. Nye.
V. Working Group Final Report and Recommendations	NIAC Chairman Erle A. Nye Presiding.
A. The Critical Infrastructure Partnership Strategic Assessment Working Group.	Alfred R. Berkeley III, Chairman and CEO, Pipeline Trading LLC., NIAC Member and Margaret E. Grayson, President, Coalescent Technologies, Inc., NIAC Member.
VI. Working Group Status Update	NIAC Chairman Erle A. Nye Presiding.
A. The Frameworks for Dealing Disasters and Related Interdependencies Working Group.	Edmund G. Archuleta, President and CEO, El Paso Water Utilities, NIAC Member; James B. Nicholson, Chairman and CEO, PVS Chemicals, Inc., NIAC Member; and The Honorable Tim Pawlenty, Governor, The State of Minnesota, NIAC Member.
VII. New Business	NIAC Chairman Erle A. Nye, Vice Chairman Alfred R. Berkeley III, NIAC Members.
VIII. Closing Remarks	Robert D. Jamison, Under Secretary for the National Protection and Programs Directorate, DHS (invited). Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS (invited).
IX. Adjournment	NIAC Chairman Erle A. Nye.

Procedural

While this meeting is open to the public, participation in The National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

Dated: September 9, 2008.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. E8–21991 Filed 9–18–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service positions of the Department.

DATES: *Effective Dates:* This Notice is effective September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Carmen Arrowood, Office of the Chief Human Capital Office, telephone (202) 357–8348.

SUPPLEMENTARY INFORMATION: Each federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Aguilar, David V., Alexander, Barbara B., Allen, Charles E., Anderson, Gary L., Armstrong, Charles R., Armstrong, Sue E., Atwood, Cynthia J., Baker, Stewart, Baldwin, William D., Barth, Richard, Bartoldus, Charles P., Bathurst, Donald G., Beagles, James M., Bell, Hubert, Bertucci, Theresa C., Bester-Markowitz, Margot, Boshears, Kevin, Boyd, Allison J., Boyd, David G., Bray, Robert, Breckenridge, Jody A. RADM, Briese, Garry L., Brown, Michael C., Brundage, William, Buswell, Bradley I., Cairns, Thomas D., Cannon, Timothy W., Capitano, David J., Capps, Michael H., Caverly, Robert J., Carpenter, Dea D., Chaparro, James M., Charbo, Lawrence Scott, Cohen, Jay M., Cohen, Robert, Cogswell, Patricia, Cohn, Alan, Conklin, William C., Conway, Paul T., Cooper, Bradford E., Correa, Soraya, Cotter, Daniel M., Coyle, Robert E., Cullen, Susan M., Daitch, William B., Dayton, Mark R., Davis, Delia Parson, DeVita,

Charles N., DiFalco, Frank J., Dooher, John C., Doyle, Christopher J., Duke, Elaine C., Essig, Thomas W., Etzel, Jean A., Fagerholm, Eric N., Falk, Scott K., Fallon, Mark, Flinn, Shawn O., Flynn, William F., Fonash, Peter M., Forman, Marcy M., Fox, J. Edward, Gabbrielli, Tina W., Gallaway, Charles, Garcia, Gregory T., Garland Jr., Charles J., Gelfer, Elizabeth, George, Susan E., Gowadia, Huban A., Graves, Margaret H., Gruber, Corey D., Gunderson, Richard K., Hagan, William, Hainje, Richard G., Hanneld, Michael R., Hardiman, Tara, Heifetz, Stephen R., Higbee, John J., Hill, Marcus L., Hooks, Robert R., Howell, David R., Husband, Thomas R., Isles, Adam R., Jamison, Robert D., Jones, Franklin C., Jones, Rendell L., Keefer, Timothy, Keenan, Alexander S., Keene, Delma K., Kent Jr., Donald H., Kerner, Francine, Killoran, Elaine P., Klaassen, Mark A., Kopel, Richard S., Kostelnik, Michael C., Krause, Scott A., Krohmer, Jon R., Kronisch, Matthew L., Lane, Jan P., Lane, Susan E., Lewis, Ashley J., Lunner, Chester F., Luczko, George P., Madon, James J., Mangogna, Richard, Maher, Joseph B., Marshall, Gregory A., Martin, Timothy P., Martinez-Fonts Jr., Alfonso, Mason, Thomas E., Maurstad, David I., McCarthy, Maureen I., McCormack, Luke, McDermond, James E., McGinnis Sr., Roger, McGowan, Morris, McQuillan, Thomas, Melmed, Lynden D., Merritt, Michael P., Myers, Raymond S., Mocny, Robert A., Morrissey, Paul S., Muenchau, Ernest E., Mullen, Michael C., Neifach, Michael H., Nichols, Frederic A., Nicholson, David, Norquist, David L., O'Dell, Douglas V., O'Melinn, Barry C., Oxford, Vayl S., Paar, Thomas C., Palmer, David J., Parent, Wayne C., Parmer Jr., Raymond R., Patrick, Connie, Peavy, Sandra H., Pelowski, Gregg R., Personette, Donald B., Philbin, Patrick J., Pierson, Julia A., Pohlman, Teresa R., Prewitt, Keith L., Rausch, Sharla P., Reid, William F., Riegle, Robert C., Risley, Lisa J., Robertson, Jeffrey C., Robles, Alfonso, Roe, W. Price, Rosenzweig, Paul S., Rossides, Gale D., Rufe Jr., Roger T., Russell, Michael D., Sammon, John, Schenkel, Gary W., Schied, Eugene H., Schilling, Deborah J., Schneider, Paul A., Schwien, Fred L., Scialabba, Lori L., Seale, Mary Ellen, Sexton, Eugenio O., Shea, Robert F., Sherry, Peggy, Shih, Stephen T., Smislova, Melissa, Smith, Alvin T., Smith, Gregory B., Smith, William E., Snow, Avie, Stahlschmidt, Patricia K., Stenger, Michael C., Stephan, Robert B., Sullivan, Daniel E., Sutherland, Daniel W., Sweet, Chad C., Tanner, George L., Teufel III, Hugo, Tomscheck, James F., Torrence, Donald, Torres, John P., Trotta, Nicholas, Tuttle, James D., Veysey, Anne M., Walker, William J., Walters, Thomas J., Walton, Kimberly, Ward, Nancy L., West, Robert C., Wetklow, Michael S., Whalen, Mary Kate, White, Brian M., Whitford, Richard A., Whitley, John E., Williams, Gerard J., Williams, Richard N., Winkoswki, Thomas S., Zitz, Robert.

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 11, 2008.

Randolph W. Kruger,

Director, Executive Resources, Office of the Chief Human Capital Office.

[FR Doc. E8–21992 Filed 9–18–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3291–EM]

Mississippi; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3291–EM), dated August 30, 2008, and related determinations.

DATES: *Effective Date:* September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 8, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21930 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3295–EM]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA–3295–EM), dated September 11, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 11, 2008, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Louisiana resulting from Hurricane Ike beginning on September 7, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct

Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Louisiana have been designated as adversely affected by this declared emergency:

Calcasieu, Cameron, Jefferson Davis, and Vermilion Parishes for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21935 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3288–EM]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3288–EM), dated August 21, 2008, and related determinations.

DATES: *Effective Date:* September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 12, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21973 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3293–EM]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3293–EM), dated September 7, 2008, and related determinations.

DATES: *Effective Date:* September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 12, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21976 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3289–EM]

Louisiana; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3289–EM), dated August 29, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 11, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21940 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3294–EM]

Texas; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3294–EM), dated September 10, 2008, and related determinations.

DATES: *Effective Date*: September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Texas is hereby amended to include the following areas among those areas for which the President declared an emergency on September 10, 2008:

Anderson, Angelina, Archer, Austin, Bee, Bell, Bowie, Brazos, Cass, Colorado, DeWitt, Franklin, Goliad, Grayson, Gregg, Harrison, Henderson, Hill, Hopkins, Jasper, Jim Hogg, Lamar, Lavaca, McLennan, Montgomery, Nacogdoches, Newton, Panola, Parker, Polk, Potter, Randall, Sabine, San Augustine, San Jacinto, Shelby, Starr, Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Webb, Williamson, and Wise Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21972 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATE: *Effective Date:* September 11, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Baker, Collier, Glades, Jefferson, Lake, Marion, and Nassau Counties for Individual Assistance (already designated for Public Assistance).

Orange and Polk Counties for Individual Assistance.

Manatee and Sarasota Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21969 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 12, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21970 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1776–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1776–DR), dated July 9, 2008, and related determinations.

DATES: *Effective Date:* September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 2008.

Barton, Ellsworth, Kingman, and Lane Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21953 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1786–DR]

Louisiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1786–DR), dated September 2, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 11, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21937 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1792–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1792–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* September 13, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 13, 2008.

Jefferson, Lafourche, Plaquemines, and Terrebonne Parishes for Individual Assistance and debris removal (Category A), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21954 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1786–DR]

Louisiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1786–DR), dated September 2, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 2, 2008.

Calcasieu Parish for Individual Assistance (already designated for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21967 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1773–DR]

Missouri; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1773–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2008.

Callaway County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21952 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1791–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date*: September 14, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 13, 2008.

Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program (already designated for debris removal [Category A], including direct Federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21932 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1791–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* September 13, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, on September 13, 2008, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), in a letter to R. David Paulison, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of Texas, resulting from Hurricane Ike beginning on September 7, 2008, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangement concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act).

Therefore, I amend my declaration of September 13, 2008, to authorize Federal funds for assistance for debris removal (Category A) under the Public Assistance program, including direct Federal assistance, at 100 percent of the total eligible costs for a period of up to 72 hours.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–21955 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: TSA Airspace Waiver Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30 Day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0033, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 30, 2008, 73 FR 36887. This collection of information allows TSA to conduct security threat assessments on individuals on board aircraft operating in restricted airspace pursuant to an airspace waiver. This collection will enhance aviation security and protect assets on the ground that are within the restricted airspace.

DATES: Send your comments by October 20, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3651; facsimile (703) 603–0822.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Airspace Waiver Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0033.

Forms(s): N/A.

Affected Public: Aircraft operators.

Abstract: TSA is requesting approval of this collection of information to enable it to operate its airspace waiver program. This program allows general

aviation aircraft operators to request permission to fly in restricted airspace. The information collected enables TSA to perform a background check on each individual on board the aircraft seeking to fly under the waiver. The affected public consists of aircraft operators of the general aviation community.

Number of Respondents: 6,000.

Estimated Annual Burden Hours: An estimated 4,400 hours annually.

Issued in Arlington, Virginia, on September 15, 2008.

John Manning,

Acting Director, Business Management Office, Office of Information Technology.

[FR Doc. E8–21890 Filed 9–18–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

CUSTOMS AND BORDER PROTECTION

Notice of Issuance of Final Determination Concerning Ground Fault Circuit Interrupter

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of a ground fault circuit interrupter (''GFCI''). Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the GFCI for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 15, 2008. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–572–8792).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 15, 2008, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of GFCI's which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H030645, was issued at the request of Pass & Seymour, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, certain GFCI's, assembled in Mexico from parts made in China, are not substantially transformed in Mexico, such that China is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: September 15, 2008.

Myles B. Harmon,

Acting Executive Director, Office of Regulations and Rulings, Office of International Trade.

HQ H030645

September 15, 2008

MAR–2–05 OT:RR:CTF:VS H030645 GOB

CATEGORY: Marking

Daniel B. Berman, Esq., Hancock & Estabrook, LLP, 1500 AXA Tower I, 100 Madison Street, Syracuse, NY 13202

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin Marking; Ground Fault Circuit Interrupter (GFCI)

Dear Mr. Berman: This is in response to your correspondence of May 1, 2008, requesting a final determination on behalf of Pass & Seymour, Inc. (''P&S''), pursuant to subpart B of Part 177, Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21 *et seq.*). Your letter was forwarded to CBP's National Commodity Specialist Division in New York and was returned to this office by memorandum of June 3, 2008. Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of a ground fault circuit interrupter (''GFCI''). We note that P&S is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

You also request a country of origin marking determination.

Facts

You describe the pertinent facts as follows. The business of P&S includes the design, manufacture, and distribution of GFCI's in the U.S. for residential and commercial use in electrical circuits of less than 1,000 volts. The GFCI's are electrical components, designed for installation in electrical circuits, which are able to detect small imbalances in the circuit's current caused by leakages of current to ground. When leakage is detected, the GFCI opens the electrical circuit, stopping the flow of current. Legrand, the parent company of P&S, produces the subcomponents of the GFCI in China through another subsidiary, Rocom Electric Co. Ltd. (''Rocom''). The subcomponents include the following: cover, reset button, test button, spring, light pipe, strap assembly, assembly terminals, contact, separator, springs, latch block top, spark gap blades, assembly screw terminals, armature, spring assembly, term assemblies, PCB subassembly, assembly screw terminals, back body, screws and labels. Rocom plans to ship the subcomponents to a facility in Mexico where they will be assembled into the GFCI's. The GFCI's will be tested and packaged at the same facility. Upon completion of assembly, testing, and packaging, the GFCI's will be imported into the U.S. by P&S for sale and distribution.

You state that the process in Mexico to assemble the GFCI is comprised of forty-three discrete steps and takes approximately ten minutes. You state that each GFCI is comprised of thirty component parts which, until inclusion in the final GFCI, have little or no functionality.

An exhibit to your correspondence, which includes photographs, describes the assembly process as follows:

1. Place back body into date code fixture/stamping press and press button to apply date code on side of back body.

2. Remove back body from date code fixture. Place hot terminal screw pressure plate assembly into back body cradle on line end.

3. Place neutral terminal screw pressure plate assembly into back body cradle on line end.
4. Place printed circuit board subassembly into back body, capturing terminal screw pressure plate subassemblies under line terminals.
5. Place hot terminal screw pressure plate subassembly into back body cradle on load end.
6. Place neutral terminal screw pressure plate subassembly into back body cradle on load end.
7. Place hot load terminal assembly into back body, over load screw pressure plate subassembly.
8. Place neutral load terminal subassembly into back body, over load screw pressure plate assembly.
9. Place two break springs into latch block.
10. Place latch block with springs onto line contacts, aligning leg of latch block over auxiliary switch on printed circuit board subassembly.
11. Drop separator over device, aligning test resistor lead through role in separator. Snap separator onto back body.
12. Place strap subassembly into center channel of separator.
13. Place hot side load contact into slot in separator.
14. Bend test resistor lead over with finger to test blade slot.
15. Press test blade leg into slot in separator, capturing test resistor lead in slot on bottom leg of test blade.
16. Place neutral side load contact into slot in separator.
17. Place light pipe into slot in separator.
18. Place reset button spring subassembly into hole through separator.
19. Set two shutter subassemblies into pockets in test button subassembly.
20. Place test button subassembly on top of device, fitting over reset button subassembly and light pipe.
21. Turn device over. Place four assembly screws in holes at corners of back body.
22. Run assembly screws in and torque down with driver.
23. Place device in automated final tester fixture.
24. Short circuit test.
25. False trip test.
26. Trip level test in forward polarity.
27. Trip level test in reverse polarity.
28. Grounded-neutral test.
29. Test-button test.
30. Dielectric test.
31. Response time test with 500 ohm fault resistor.
32. If device passes all tests, hand solder link across solder bridge on bottom of printed circuit board to activate miswire circuit.
33. Depress reset button on device and place device in automatic miswire-function tester. Push button to initiate test to verify device trips.
34. If device passes, snap plastic cap into back body, covering miswire solder bridge.
35. Remove miswire label from roll and apply across back body and load terminal screws.
36. Remove UL label from roll and apply to neutral side of device, overlapping back body, separator and cover.
37. Place cardboard protector over face of device.
38. Place wallplate subassembly with captive screws over cardboard protector and face of device.
39. Take stack of three pre-folded instruction sheets and fuse box label and place under device.
40. Remove product box label from roll and place on flap of individual box.
41. Assemble individual box, closing flap on one end.
42. Slide device, protector, wallplate and instruction sheets into individual box and close flap.
43. Place individual box in carton for shipping.

Issues

1. What is the country of origin of the GFCI's for the purpose of U.S. government procurement?
2. What is the country of origin of the GFCI's for the purpose of marking?

Law and Analysis

Government Procurement

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Acquisition Regulations. See 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

> ... an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. United States, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. Factors which may be relevant in this evaluation may include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc.* v. *United States,* 3 CIT 220, 542 F. Supp. 1026 (1982), aff'd 702 F. 2d 1022 (Fed. Cir. 1983). In Uniroyal, the court determined that a substantial transformation did not occur when an imported upper, the essence of the finished article, was combined with a domestically produced outsole to form a shoe.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a

product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In a number of rulings (e.g., HQ 735608, dated April 27, 1995 and HQ 559089 dated August 24, 1995), CBP has stated: ''In our experience these inquiries are highly fact and product specific; generalizations are troublesome and potentially misleading. The determination is in this instance 'a mixed question of technology and customs law, mostly the latter.' *Texas Instruments, Inc.* v. *United States*, 681 F.2d 778, 783 (CCPA 1982).''

In HQ 734050 dated June 17, 1991, CBP held that the assembly of five subassemblies by a screwdriver operation that took 45 minutes was not a substantial transformation. In HQ 561392 dated June 21, 1999, CBP considered the country of origin marking requirements of an insulated electric conductor which involved an electrical cable with pin connectors at each end used to connect computers to printers or other peripheral devices. The cable and connectors were made in Taiwan. In China, the cable was cut to length and connectors were attached to the cable. CBP held that cutting the cable to length and assembling the cable to the connectors in China did not result in a substantial transformation. In HQ 560214 dated September 3, 1997, CBP held that where wire rope cable was cut to length, sliding hooks were put on the rope, and end ferrules were swaged on in the U.S., the wire rope cable was not substantially transformed. CBP concluded that the wire rope maintained its character and did not lose its identity and did not become an integral part of a new article when attached with the hardware. In HQ 555774 dated December 10, 1990, CBP held that Japanese wire cut to length and electrical connectors crimped onto the ends of the wire was not a substantial transformation. In HQ 562754 dated August 11, 2003, CBP found that cutting of cable to length and assembling the cable to the Chinese-origin connectors in China did not result in a substantial transformation of the cable.

This case involves 30 components manufactured in China which are proposed to be assembled in Mexico in a process involving 43 steps which will take ten minutes. After a careful consideration of the pertinent facts and authorities, we find that the assembly operations to be performed in Mexico are not sufficiently complex for the process to result in a substantial transformation of the components. We note that the printed circuit board subassembly from China is placed into the back body of the GFCI. It is a major functional part of the finished GFCI and provides the essential character to the GFCI. Further, we note that: only a short amount of time is required for assembly (ten minutes); the assembly process itself is not at all complex; many of the steps involve testing, which we do not find in this case to be significant with respect to a substantial transformation claim; and all of the components are manufactured in China.

Therefore, based upon our finding that there is no substantial transformation of the components in Mexico, we determine that the country of origin of the GFCI for government procurement purposes is China.

Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, CBP Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines the country of origin of an article as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin for country of origin marking purposes; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j), CBP Regulations provides that the ''NAFTA Marking Rules'' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g), CBP Regulations defines a ''good of a NAFTA country'' as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

Part 102, CBP Regulations (19 CFR Part 102), sets forth the ''NAFTA Marking Rules'' for purposes of determining whether a good is a good of a NAFTA country. Section 102.11, CBP Regulations (19 CFR 102.11) sets forth the required hierarchy for determining country of origin for marking purposes. Section 102.11(a), CBP Regulations provides that the country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other requirements of these rules are satisfied.

''Foreign Material'' is defined in section 102.1(e), CBP Regulations as ''a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.''

We find that we are unable to determine the country of origin of the GFCI by section 102.11(a), CBP Regulations. Section 102.11(a)(1) and (2) are not applicable, i.e., the GFCI is not wholly obtained or produced and the GFCI is not produced exclusively from domestic materials. Further, pursuant to section 102.11(a)(3), CBP Regulations, there is no applicable change in tariff classification for each foreign material as set out in section 102.20, CBP Regulations, as the GFCI and the PCB subassembly are both classified in subheading 8536.30.80, Harmonized Tariff Schedule of the United States (''HTSUS'').

Section 102.11(b), CBP Regulations provides in pertinent part that, except for a good that is specifically described in the HTSUS as a set, or is classified as a set pursuant to General Rule of Interpretation 3 (neither of these conditions are satisfied), where the country of origin cannot be determined under paragraph (a) of section 102.11:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good[.]

Section 102.18(b)(1), CBP Regulations provides in pertinent part as follows:

(b)(1) For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under

the § 102.20 specific rule or other requirements applicable to the good.

A change in tariff classification is not allowed with respect to the PCB subassembly. As stated above, both the PCB subassembly and the GFCI are classified in subheading 8536.30.80, HTSUS. The PCB subassembly is manufactured in China (as are all of the components of the GFCI). Therefore, under section 102.11(b)(1), CBP Regulations, the country of origin of the GFCI is China.

Pursuant to 19 U.S.C. 1304, the country of origin of the GFCI for country of origin marking purposes is China.

Holdings

The assembly operations to be performed in Mexico are not sufficiently complex for the process to result in a substantial transformation of the components. Therefore, the country of origin of the GFCI for government procurement purposes is China.

Pursuant to 19 U.S.C. 1304, the country of origin of the GFCI for country of origin marking purposes is China.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Myles B. Harmon,
Acting Executive Director,
Office of Regulations and Rulings,
Office of International Trade.

[FR Doc. E8–21934 Filed 9–18–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 11, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–21696 Filed 9–18–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0230; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before October 20, 2008.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

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.

Permit TE–122856

Applicant: George Myers, Buda, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chryosparia*) and black-capped vireo (*Vireo atricapilla*) within Texas, Oklahoma and Kansas.

Permit TE–187090

Applicant: Patricia Salas, Castle Hills, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Permit TE–188015

Applicant: Pueblo of Santa Ana-Natural Resources, Pueblo of Santa Ana, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the Rio Grande silvery minnow (*Hybognathus amarus*) on lands within the Pueblo of Santa Ana.

Permit TE–189566

Applicant: Monica Geick, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Permit TE–192229

Applicant: Krista McDermid, Buda, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: Peck's Cave amphipod (*Stygobromus peckii*), Comal Spring dryopid beetle (*Stygoparnus comalensis*), Coffin Cave mold beetle (*Batrisodes texanus*), Helotes mold beetle (*Batrisodes venyivi*), Comal Springs riffle beetle (*Heterelmis comalensis*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Tooth Cave ground beetle (*Rhadine persephone*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Cicurina venii*), Braken Bat Cave mesheweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Neoleptoneta myopica*), Tooth Cave psuedoscorpion (*Tartarocreagris texana*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesii*), and Robber Baron Cave harvestman (*Texella cokendolpheri*) within Texas.

Permit TE–192855

Applicant: Amnis Opes Institute, LLC. Albany, Oregon.

Applicant requests a new research and recovery permit to conduct presence/absence surveys of the following species: Gila chub (*Gila intermedia*), Rio Grande silvery minnow (*Hybognathus amarus*), Pecos gambusia (*Gambusia nobilis*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*), and Yaqui topminnow (*Poeciliopsis occidentalis sonoreiensis*) within New Mexico and Arizona.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: *August 27, 2008.*

Nancy J Gloman,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E8–21923 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0251; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host Wind Turbine Guidelines Advisory Committee (Committee) meetings on October 21–23, 2008, and January 27–29, 2009. The meetings are open to the public. The meeting agendas will include reports from the Subcommittees on Existing Guidelines, Incentives, Guiding Principles, Legal, Landscape/Habitat, Science Tools & Procedures, and Other Models/Uncertainty.

DATES: The meetings will be held on October 21–23, 2008, from 2:15 to 5 p.m. on October 21 and 8 a.m. to 4:30 p.m. on October 22–23, and January 27–29, 2009, from 8 a.m. to 4:30 p.m.

ADDRESSES: South Interior Auditorium, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20240. For more information, see ''Meeting Location Information'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2007, the Department of the Interior published a notice of establishment of the Committee and call for nominations in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is expected to exist for 2 years and meet approximately four times per year, and its continuation is subject to biennial renewal. All Committee members serve without compensation. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter has been filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress. The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The Service has held Committee meetings in February, April, June, and July of 2008. All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least two weeks in advance of the meeting(s) you plan to attend.

All persons planning to attend a meeting will be required to present photo identification when entering the building. Because of building security in the Department of the Interior, we recommend that persons planning to attend the workshop and/or meeting register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html* by October 14, 2008, for the October 21–23, 2008, meeting, and by January 20, 2009, for the January 27–29, 2009, meeting, to allow us sufficient time to provide the building security staff with lists of persons planning to attend. You may still attend if you register after the dates listed above; however, seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. Limited standing room will be available if all seats are filled.

Dated: September 3, 2008.

David J. Stout,

Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E8–22000 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is inviting comments on collection of information that we have sent to the Office of Management and Budget (OMB) for review and approval. The Information Collection Request (ICR) concerns the paperwork requirements for the National Land Remote Sensing Education, Outreach and Research Program (NLRSEORP) and describes the nature of the collection and the estimated burden and cost.

DATES: Submit written comments by October 20, 2008.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of Interior via e-mail [*OIRA_DOCKET@omb.eop.gov*]; or fax (202) 395–6566; and identify your submission as 1028–NEW. Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, NLRSEORP in the subject line.

FOR FURTHER INFORMATION PLEASE CONTACT: To request additional information concerning this ICR, contact Thomas Cecere by mail at U.S. Geological Survey, MS 517 National Center, Reston, VA 20192 or by telephone at (703) 648–5551.

SUPPLEMENTARY INFORMATION:

Title: National Land Remote Sensing Education, Outreach and Research Program (NLRSEORP).

OMB Control Number: 1028–NEW.

Abstract: The Land Remote Sensing Education, Outreach and Research Program (NLRSEORP) is an effort that involves the development of a U.S. national consortium in building the capability to receive, process and archive remotely sensed data for the purpose of providing access to university and State organizations in a ready to use form, and to expand the science of remote sensing through education, research/applications development and outreach in areas such as environmental monitoring, climate change research, natural resource management and disaster analysis. Respondents are submitting proposals to acquire funding for a National (U.S.) program to promote the uses of space-based land remote sensing data and technologies through education and outreach at the State and local level and through university based and collaborative research projects. The information collected will ensure that sufficient and relevant information is available to evaluate and select a proposal for funding. A panel of USGS geography program managers and scientists will review each proposal to evaluate the technical merit, requirements, and priorities identified in the program's call for proposals.

This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency of Collection: On occasion.

Affected Public: Non-profit organizations.

Respondent Obligation: Voluntary (necessary to receive benefits).

Estimated Number and Description of Respondents: We expect to receive approximately 10 proposals during the grant application process. We anticipate issuing 1 grant per year. The program is open to non-profit organizations.

Estimated Number of Responses: Approximately 10 applications and 2 reports per year.

Estimated Completion Time per Response: Based on comments received during the FR Notice 60 day comment period, we estimate that the burden will be 24 hours per applicant and 10 hours per grantee. We expect to receive approximately 10 applications per year, taking each applicant approximately 24 hours to complete, totaling 240 burden hours. We anticipate awarding one (1) grant per year. The grantee will be required to submit 2 reports: an interim 6 months after the start of the project and a final report on or before 90 working days after the expiration of the agreement. We estimate that it will take approximately 10 hours to complete and submit both reports.

Annual Burden Hours: 250.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor; and you are not required to respond to, 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: To comply with the public consultation process, on April 29, 2008, we published a **Federal Register** notice (73 FR 23268) announcing our intent to submit this information collection to OMB for approval. In that notice we solicited public comments for 60 days, ending on June 30, 2008. We did not receive any public comments in response to the notice. We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public view, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Phadrea D. Ponds, 970–226–9445.

Dated: September 11, 2008.

Bruce Quirk,

Program Coordinator, Land Remote Sensing Program, U.S. Geological Survey.

[FR Doc. E8–21920 Filed 9–18–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Geological Survey: Privacy Act of 1974, as Amended; Establishment of a New System of Records

AGENCY: U.S. Geological Survey.

ACTION: Proposed establishment of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5

U.S.C. 552a), the Department of the Interior is issuing public notice of its intent to establish a new Privacy Act system of records notice to its inventory: Interior, USGS–01, ''National Water Information System: NWIS.''

DATES: Comments must be received by October 29, 2008.

ADDRESSES: Any persons interested in commenting on this new system of records may do so by submitting comments in writing to the U.S. Geological Survey Privacy Act Officer, Deborah Kimball, National Center, 12201 Sunrise Valley Drive, MS–807, Reston, Virginia 20192, or by e-mail to *dkimball@usgs.gov*.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey Privacy Act Officer, Deborah Kimball, National Center, 12201 Sunrise Valley Drive, MS–807, Reston, Virginia 20192, or by e-mail to *dkimball@usgs.gov*.

SUPPLEMENTARY INFORMATION: NWIS is the repository of hydrologic data collected as part of cooperative hydrologic studies nationwide for the Water Resources Division of the USGS. In addition to comprehensive nationwide information on groundwater and surface water quantity and quality, the NWIS contains information about individuals or groups that own or have control of physical access to sites where USGS collects data. This system of records notice will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The U.S. Geological Survey will publish a revised notice if changes are made based upon a review of comments received.

Dated: September 11, 2008.

Deborah Kimball,

U.S. Geological Survey Privacy Act Officer.

SYSTEM NAME:

USGS, USGS–01, ''National Water Information System: NWIS''.

SYSTEM LOCATION:

U.S. Geological Survey, Water Resources Discipline, National Water Information System, 12201 Sunrise Valley Drive, MS 437, Reston, VA 20192 and 45 Water Science Centers (for locations see ''System Managers and Addresses'' below).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and groups who own or control physical access to groundwater or surface-water sites in the United States.

Note: This system contains records relating to corporations and other business entities. However, only records containing personal information relating to individuals are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each entry in the system contains non-mandatory fields that may contain information about the site-owner or a contact person associated with the site. This information includes site-owner name or contact person's name, postal address, and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 31 *et seq.* The Organic Act of March 3, 1879, as amended (1962); directs the Geological Survey to classify the public lands and examine the geological structure, mineral resources, and products within and outside the national domain.

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

The following routine uses may apply, as appropriate, to disclosures from record systems at the Department of the Interior that are protected by the Privacy Act of 1974, 5 U.S.C. 552, *et seq.*

The primary uses of the records in the system are:

(1) To maintain accurate, timely and complete information about groundwater and surface-water quantity, quality and use at sites throughout the United States, so that reports and surveys can be developed analyzing accurate information.

(2) To maintain information on site-owners and those controlling access to sites in order to obtain advance approval to visit a site on private land, or to request additional information about the site or activities taking place there.

Other disclosures outside the Department of the Interior may be made:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on

DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department 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 the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure will not be made to consumer reporting agencies.

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

STORAGE:

Records are stored on magnetic hard disk media in relational databases at 45 Water Science Centers. These facilities are under the direction of the USGS, Water Resources Division (WRD) Science Center Directors. In addition to the forty-five Water Science Center sites, there are two NWIS real-time (NWIS–RT) redundant processing sites and the system development and testing site where the records are stored on hard disk in relational databases.

RETRIEVABILITY:

Records are retrieved by site location number only.

SAFEGUARDS:

(1) *Physical Security:* Servers and related electronic systems including computer station monitors are located in locked buildings. In many locations law enforcement is also present to protect their security.

(2) *Technical Security:* Electronic records are maintained in conformity with Office of Management and Budget, National Institute of Standards Technology, and Departmental requirements reflecting the implementation of the Federal Information Security Management Act. Electronic data is protected through user identification, passwords, database permissions, a Privacy Act Warning, and software controls. These security measures establish different degrees of access for different types of users. NWIS controls access using three layers of security: system user authentication, database access (table and row level) via grants, and roles and groups on the NWIS application. The Security Plan addresses the Department's Privacy Act safeguard requirements for Privacy Act systems at 43 CFR 2.51. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and safeguards are sufficient and in place. Its provisions will be updated as needed to ensure that Privacy Act requirements continue to be met.

(3) *Administrative Security:* Access is strictly limited to authorized personnel whose official duties require such access. All Departmental and contractor employees with access to NWIS are required to complete Privacy Act, Federal Records Act, and Information Technology Security Awareness training prior to being given access to the system, and on an annual basis, thereafter. All users sign security forms stating they will neither misuse government computers nor the information contained therein. In addition, managers and supervisors of users monitor the use of the database and ensure that the information is used in accordance with certified and accredited business practices.

RETENTION AND DISPOSITION:

The data stored in the NWIS databases are permanent records; therefore, the retention period is indefinite. When the data is no longer required for research or if the NWIS program is discontinued, records will be transferred to NARA for permanent retention pursuant to Records Schedules for similar records. This is in accordance with NARA Item Number 1400–01 dated April 14, 2008, and is part of the overall Water Resource Discipline Scientific Records Disposition Schedule.

SYSTEM MANAGER(S) AND ADDRESSES:

(1) National Water Information System Program Office Chief, U.S. Geological Survey, Water Resources Discipline, 12201 Sunrise Valley Drive, MS 437, Reston, VA 20192;

(2) Director, Alabama Water Science Center, AUM TechnaCenter, 75 TechnaCenter Drive, Montgomery, AL 36117;

(3) Director, Alaska Science Center, 4230 University Drive, Grace Hall, Anchorage, AK 99508–4664;

(4) Director, Arizona Water Science Center, 520 North Park Avenue, Suite 221, Tucson, AZ 85719–5035;

(5) Director, Arkansas Water Science Center, 401 Hardin Road, Little Rock, AR 72211–3528;

(6) Director, Caribbean Water Science Center, GSA Center, 651 Federal Drive, Suite 400–15, Guaynabo, PR 00965;

(7) Director, Colorado Water Science Center, Denver Federal Center, Box 25046, Mail Stop 415, Denver, CO 80225;

(8) Director, Florida Integrated Science Center—Tallahassee, 12703 Research Parkway, Orlando, FL 32826;

(9) Director, Georgia Water Science Center, 3039 Amwiler Road, Suite 130, Atlanta, GA 30360–2824;

(10) Water Director, Idaho Water Science Center, 230 Collins Road, Boise, ID 83702–4520;

(11) Director, Illinois Water Science Center, 221 N. Broadway Avenue, Suite 101, Urbana, IL 61801–2748;

(12) Director, Indiana Water Science Center, 5957 Lakeside Blvd, Indianapolis, IN 46278;

(13) Director, Iowa Water Science Center, 400 South Clinton Street, Room 269, Iowa City, IA 52240;

(14) Director, Kansas Water Science Center, S4821 Quail Crest Place, Lawrence, KS 66049;

(15) Director, Kentucky Water Science Center, 9818 Bluegrass Parkway, Louisville, KY 40299;

(16) Director, Louisiana Water Science Center, 3535 Sherwood Forest Blvd., Suite 120, Baton Rouge, LA 70816;

(17) Director, Maryland Water Science Center, 5522 Research Park Drive, Baltimore, MD 21228;

(18) Director, Massachusetts Water Science Center, 10 Bearfoot Road, Northborough, MA 01532;

(19) Director, Michigan Water Science Center, 6520 Mercantile Way, Suite 5, Lansing, MI 48911;

(20) Director, Minnesota Water Science Center, 2280 Woodale Drive, Mounds View, MN 55112;

(21) Director, Mississippi Water Science Center, 308 S. Airport Road, Pearl, MS 39208–6649;

(22) Director, Missouri Water Science Center, 1400 Independence Road, Rolla, MO 65401;

(23) Director, Montana Water Science Center, 3162 Bozeman Avenue, Helena, MT 59601;

(24) Director, Nebraska Water Science Center, 5231 South 19th Street, Lincoln, NE 68512–1271;

(25) Director, Nevada Water Science Center, 2730 N. Deer Run Road, Carson City, NV 89701;

(26) Director, New Jersey Water Science Center, 810 Bear Tavern, Suite 206, West Trenton, NJ 08628;

(27) Director, New Mexico Water Science Center, 5338 Montgomery Blvd. NE, Suite 400, Albuquerque, NM 87109;

(28) Director, New York Water Science Center, 425 Jordan Road, Troy, NY 12180–8349;

(29) Director, North Carolina Water Science Center, 3916 Sunset Ridge Road, Raleigh, NC 27602;

(30) Director, North Dakota Water Science Center, 821 East Interstate Avenue, Bismarck, ND 58503–1199;

(31) Director, Ohio Water Science Center, 6480 Doubletree Avenue, Columbus, OH 43229–1111;

(32) Director, Oklahoma Water Science Center, NW 66th Street, Building 7, Oklahoma City, OK 73116;

(33) Director, Oregon Water Science Center, 2130 SW 5th Avenue, Portland, OR 97201;

(34) Director, Pacific Islands Water Science Center, 677 Ala Moana Blvd., Suite 415, Honolulu, HI 96813;

(35) Director, Pennsylvania Water Science Center, 215 Limekiln Rd., New Cumberland, PA 17070;

(36) Director, South Carolina Water Science Center, 720 Gracern Road, Suite 129, Columbia, SC 29210;

(37) Director, South Dakota Water Science Center, 1608 Mt. View Road, Rapid City, SD 57702;

(38) Director, Tennessee Water Science Center, 640 Grassmere Park, Suite 100, Nashville, TN 37211;

(39) Director, Texas Water Science Center, 8027 Exchange Drive, Austin, TX 78754–4733;

(40) Director, Utah Water Science Center, 2329 W. Orton Circle, Valley City, UT 84119–2047;

(41) Director, Virginia Water Science Center, 1730 East Parham Road, Richmond, VA 23228;

(42) Director, Washington Water Science Center, 934 Broadway, Suite 300, Tacoma, WA 98402;

(43) Director, Western Region Office, 3020 State University Drive East, Suite 3005, Menlo Park, CA 94025;

(44) Director, West Virginia Water Science Center, 11 Dunbar Street, Charleston, WV 25301;

(45) Director, Wisconsin Water Science Center, 8505 Research Way, Middleton, WI 53562–3581;

(46) Director, Wyoming Water Science Center, 2617 E. Lincolnway, Suite B, Cheyenne, WY 82001.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records about an individual shall be addressed to the appropriate Water Science Center Director shown under the System Managers list above. A written, signed request stating that the requestor seeks information concerning records pertaining to him or herself is required. (see 43 CFR 2.60.)

RECORD ACCESS PROCEDURES:

For copies of your records, write to the appropriate Water Science Center Director shown under the System Managers list above. The request must be in writing, signed by the requestor, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

To request amendment of your records, write to the appropriate Water Science Center Director shown under the System Managers list above. The request must be in writing, signed by the requestor and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Designated USGS personnel enter site-owner location information that is provided by individuals, well drillers, local, State environmental protections offices, water management districts or Federal cooperating agencies such as the U.S. Army Corps of Engineers, Environmental Protection Agency, and the Department of Commerce, National Oceanic and Atmospheric Administration's National Weather Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–21913 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–Y7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Environmental Impact Statement for the Proposed Riverton Dome Coal Bed Natural Gas and Conventional Gas Development, Wind River Indian Reservation, Fremont County, WY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Joint Business Council of the Eastern Shoshone and Northern Arapaho Tribes, Bureau of Land Management and U.S. Environmental Protection Agency (EPA), intends to file a Final Environmental Impact Statement (FEIS) with EPA for the proposed coal bed natural gas and conventional gas development project, and that the FEIS is now available to the public.

DATES: The Record of Decision on the proposed action will be issued on or after October 21, 2008. Any comments on the FEIS must arrive by October 20, 2008.

ADDRESSES: You may mail or hand carry written comments to Ray Nation, Deputy Superintendent, Trust Services, Bureau of Indian Affairs, Wind River Agency, First and Washakie Streets, Fort Washakie, Wyoming 82514.

Paper or CD copies of the FEIS are available at the above address and at the Bureau of Land Management, Lander Field Office, 1335 Main Street, Lander, Wyoming 82420.

FOR FURTHER INFORMATION CONTACT: Ray Nation, (307) 332–3718.

SUPPLEMENTARY INFORMATION: The Riverton Dome Project Area (RDPA) is located on the southeast corner of the Wind River Indian Reservation in Township 1S, Range 4E, Sections 13, 14, 23, 24, 25, 26, 35, and 36; Township 2S, Range 4E, Sections 1, 2, 11 and 12; Township 1S, Range 5E, Sections 17, 18, 19, 20, 29, 30, 31 and 32; and Township 2S, Range 5E, Sections 5, 6, 7, and 8, in Fremont County, Wyoming, approximately 5 miles southeast of the city of Riverton, Wyoming. The Project Area is approximately 13,804 acres in size, of which 12,656 acres of surface and minerals belong to the Eastern Shoshone and Northern Arapaho Tribes and 1,148 acres of surface and minerals are privately owned.

The FEIS analyzes three alternatives: the proposed action (Alternative A), existing leases (Alternative B) and no action (Alternative C). The BIA has chosen Alternative B, rather than the proposed action, as the preferred alternative for this project.

Alternative B consists of developing from 70 coal bed natural gas (CBNG) wells at 80-acre spacing to 151 CBNG wells at 40-acre spacing. The initial spacing for each new CBNG well drilled is 80-acre spacing. Forty-acre spacing would only be utilized if 80-acre spacing is not sufficient to efficiently produce the CBNG from the formation. The assumption that all CBNG wells would be drilled at 40-acre spacing was used to evaluate the maximum potential disturbance, produced water production, roads, pipelines, and compression needed for development. The actual number of CBNG wells to be drilled under the Alternative B is anticipated to be less than the maximum of 151 wells. In addition, up to 20 conventional gas wells could be drilled under Alternative B.

Alternative B would result in less than 57 percent of the initial surface disturbance anticipated under the proposed action and less than 55 percent of the long-term surface disturbance. The decrease in surface disturbance would result in fewer impacts to the natural resources within the RDPA. In addition, the selection of the Alternative B incorporates the implementation of various avoidance, minimization, and mitigation measures.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: August 28, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E8–21628 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–9261; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for lands located on Nunivak Island, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 20, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E8–21914 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Notice of Availability

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of availability of a Supplemental Draft Environmental Impact Statement for the Chattahoochee River National Recreation Area General Management Plan.

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the NPS announces the availability of a Supplemental Draft Environmental Impact Statement/General Management Plan (SDEIS/GMP) for the Chattahoochee River National Recreation Area (CRNRA) in the Atlanta, Georgia metropolitan area.

The document provides a framework for management, use, and development options for the CRNRA by the NPS for the next 15 to 20 years. The document describes six management alternatives for consideration, including a no-action alternative that continues current management policies, and analyzes the environmental impacts of those alternatives. The CRNRA includes a maximum of 10,000 acres of land in 16 units distributed along a 48-mile corridor between Peachtree Creek, Atlanta, and Buford Dam. The CRNRA is linear corridor surrounded by rapidly developing urban and suburban areas.

DATES: Written comments regarding the SDEIS/GMP must be post marked no later than 60 days from the Environmental Protection Agency's publication of its Notice of Availability in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Dan Brown, Superintendent Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Atlanta, Georgia, 30350–3400. Comments may also be submitted through the NPS Planning Environment and Public Comment (PEPC) Web site: *http://parkplanning.nps.gov*. Copies of the SDEIS are available by contacting the Park Superintendent. An electronic copy of the SDEIS is available on the Internet at *http://parkplanning.nps.gov/projectHome.cfm?parkId=364&projectId=11174*. 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.

SUPPLEMENTARY INFORMATION: On July 30, 2004, the NPS issued a Draft GMP/EIS for the CRNRA. Many reviewers objected to some of the provisions of the alternative management strategies that were proposed in the draft plan. In consultation with the Georgia Department of Natural Resources the NPS made major revisions to the plan document including the development of two new alternatives. Subsequently, the NPS held public, stakeholder, and consulting party meetings to gather advice and feedback on the proposed new alternatives for the future management of the CRNRA. The input from the meetings assisted the NPS in developing these new alternatives for managing the cultural and natural

resources. The SDEIS/GMP provides a discussion and environmental analysis of the two new alternatives together with the original alternatives.

The NPS has selected a new preferred alternative for the supplemental draft that has been designated as Alternative F. Implementation of Alternative F would increase the opportunities for the NPS to expand use to local visitors and increase connectivity to neighboring communities. It would provide diverse opportunities for recreational use and different types of trail linkages to city and county parks. It would also eliminate features of the original draft GMP/EIS that received broad public objections following its release.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Dan Brown at 678–538–1211 or David Libman, (404) 562–3124, extension 685.

The responsible official for this EIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: *June 18, 2008.*

David Vela,

Regional Director, Southeast Region.

[FR Doc. E8–21911 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–PU–P

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Thursday, October 23, 2008 at 9 a.m. until 2 p.m., at the H. Councill Trenholm State Technical College, Library Tower—Video Conference Room 317, 3086 Mobile Highway in Montgomery, AL. The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) Update on trail projects.

(B) Updates on the Montgomery Interpretive Center proposed sites.

(C) Close out of the Committee.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent concerning the matters to be discussed.

Persons wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334.727.6390 (phone), 334.727.4597 (fax) or mail 1212 West Montgomery Road, Tuskegee Institute, Alabama 36088. Or call Jim Heaney, Program Manager at 334–877–1984.

Dated: August 19, 2008.

Catherine F. Light,

Selma to Montgomery National Historic Trail, Superintendent.

[FR Doc. E8–21130 Filed 9–18–08; 8:45 am]

BILLING CODE 4310–04–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Modification of Consent Decree With Broderick Investment Company Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 15, 2008 a Stipulation and Modification of Consent Decree (''Stipulation'') with Broderick Investment Company (''BIC'') in United States of America v. Broderick Investment Company, Civil Action No. 86–Z–369, was lodged with the United States District Court for the District of Colorado.

The United States and the State of Colorado previously entered into a consent decree with BIC that was approved and entered by the United States District for the District of Colorado on June 26, 1995. Pursuant to that consent decree BIC is obligated to complete the remedy for the Broderick Wood Products Superfund Site in Adams County, Colorado (the ''Site''). The Stipulation effects a compromise of a portion of EPA's billings to BIC for EPA's oversight costs for the years 2002, 2003, and 2004, and suspends BIC's obligation to pay EPA's future oversight costs. The Stipulation provides a process for EPA to bill BIC for future oversight costs and to be reimbursed for the uncompromised prior oversight costs if BIC completes the remedy without depleting all its financial assets.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Broderick Investment Company*, Ref. 90–7–13254.

The Stipulation may be examined at the Office of the United States Attorney for the District of Colorado, 1225 Seventeenth Street, Suite 700, Denver, CO 80202, and at U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop St., Denver, CO 80202–1129. During the public comment period, the Stipulation may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Stipulation may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–21894 Filed 9–18–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 12, 2008, a proposed consent decree in *United States of America and California Department of Toxic Substances Control (''DTSC'')* v. *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, Civil No. 2:08–at–1061, was lodged with the United States District Court for the Eastern District of California.

This Consent Decree resolves claims asserted by the United States and DTSC

in a complaint filed on September 12, 2008, against the settling defendants pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for the recovery of response costs related to releases and threatened releases of hazardous substances from the Lava Cap Mine Superfund Site located in Nevada County, California (''the Site'').

The proposed Consent Decree provides for the payment by the settling defendants of $3 million in response costs incurred at the Site, including $1,860,000 to be paid to the United States and $1,140,000 to be paid to DTSC.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America and California Department of Toxic Substances Control* v. *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, D.J. Ref. 90–11–3–09404.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of California, 501 I Street, Suite 10–100, Sacramento, CA 95814, and at U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (.25 cents per page reproduction cost) payable to the U.S. Treasury, or if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–21863 Filed 9–18–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–314P]

Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2009: Proposed

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed annual assessment of needs for 2009.

SUMMARY: This notice proposes the initial year 2009 assessment of annual needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006. The Act required DEA to establish production quotas and import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. The enactment of the CMEA places additional regulatory controls upon the manufacture, distribution, importation, and exportation of the three List I chemicals.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before October 20, 2008.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–314P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, *Attention:* DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. However, persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, 715 of CMEA amended 21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

* * * * *

(d)(1) With respect to a registrant under section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to

import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

The proposed year 2009 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

To develop the 2009 assessment of annual needs for the United States, DEA considered applications for 2009 import, manufacturing, and procurement quotas received from DEA registered manufacturers and importers. DEA further considered information contained in import and export declarations (DEA–486) along with information relating to trends in the national rate of disposals, actual and estimated inventories, and projected demand for the List I chemicals ephedrine, pseudoephedrine and phenylpropanolamine in accordance with 21 CFR 1315.11.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes the following 2009 assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine for 2009, expressed in kilograms of anhydrous base:

List I chemicals	Proposed Year 2009 assessment of annual needs
Ephedrine (for sale) ..	2,500 kg
Ephedrine (for conversion).	110,000 kg
Pseudoephedrine (for sale).	415,000 kg
Phenylpropanolamine (for sale).	7,500 kg
Phenylpropanolamine (for conversion).	50,000 kg

Ephedrine (for conversion) refers to the industrial use of ephedrine, i.e., that which will be converted to another basic drug class such as methamphetamine or pseudoephedrine. Phenylpropanolamine (for conversion) refers to the industrial use of phenylpropanolamine, i.e., that which will be converted to another basic drug class such as amphetamine used for the manufacture of drug products for the treatment of attention-deficit hyperactivity disorders. The ''for sale'' assessments refer to the amount of ephedrine, pseudoephedrine, and phenylpropanolamine intended for ultimate use in products containing these List I chemicals.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the ''**ADDRESSES**'' section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief. Persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1315.13(e).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of the assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of assessment of annual needs are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: September 10, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–21960 Filed 9–18–08; 8:45 am]

BILLING CODE 4410–09–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 September 29, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of September 2008.

Erin FitzGerald,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 9/2/08 and 9/5/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63961	Saginaw Machine Systems, Inc. (State)	Saginaw, MI	09/02/08	08/27/08
63962	GE Consumer Industrial Lighting (IUE)	Willoughby, OH	09/02/08	08/18/08
63963	Fisher Corporation (Comp)	Troy, MI	09/02/08	09/01/08
63964	Boise Cascade LLC (AWPPW)	Salem, OR	09/02/08	08/29/08
63965	General Motors Vehicle Manufacturing (UAW)	Oklahoma City, OK	09/03/08	09/02/08
63966	Honeywell (Wkrs)	Elberton, GA	09/03/08	08/27/08
63967	Merkle-Korff Industries Mt. Prospect Rd. Plant (Comp)	Des Plaines, IL	09/03/08	08/18/08
63968	Genie Company—Overhead Door Corp. (Wkrs)	Shenandoah, VA	09/03/08	08/27/08
63969	HD Supply, Inc. (Wkrs)	Columbus, GA	09/03/08	08/18/08
63970	A. Klein & Company, Inc. (Comp)	Claremont, NC	09/03/08	08/29/08
63971	ATS Automotive Technology Systems (State)	Lawrenceville, IL	09/03/08	09/02/08
63972	DeRoyal Industries, Inc. (Wkrs)	Powell, TN	09/03/08	08/26/08
63973	Steelcase Inc. (State)	Grand Rapids, MI	09/03/08	08/21/08
63974	Element Customer Care LLC (Wkrs)	Durham, NC	09/03/08	08/18/08
63975	Hubbell Power Systems, Inc. (Comp)	Elkton, TN	09/03/08	08/21/08
63976	Stauble Machine and Tool (Wkrs)	Louisville, KY	09/03/08	09/02/08
63977	Easy Garment, Inc. (Wkrs)	New York, NY	09/03/08	08/29/08
63978	Rieter Automotive (State)	Saint Joseph, MI	09/03/08	07/22/08
63979	Emerson Power Transmission (Wkrs)	Aurora, IL	09/04/08	08/22/08
63980	Pollak (Comp)	Canton, MA	09/04/08	09/02/08
63981	Prime Tanning (Comp)	Berwick, ME	09/04/08	09/02/08
63982	Moraine Sequencing Center, Inc. (OH)	Moraine, OH	09/04/08	09/02/08
63983	Hillerick and Bradsby (Wkrs)	Ontario, CA	09/04/08	09/03/08
63984	Norwalk Furniture (Comp)	Livingston, TN	09/04/08	09/03/08
63985	Cooper Standard Automotive (Union)	Auburn, IN	09/04/08	09/02/08
63986	Khoury, Inc. (Comp)	Kingsford, MI	09/04/08	09/03/08
63987	Metaldyne (UAW)	St Marys, PA	09/04/08	08/28/08
63988	Porter Engineered Systems, Inc. (Comp)	Westfield, IN	09/04/08	09/03/08
63989	JLG Industries (Wkrs)	McConnellsburg, PA	09/04/08	09/03/08
63990	Whirlpool Oxford Division (Comp)	Oxford, MS	09/05/08	09/04/08
63991	United Steel and Wire Company (State)	Battle Creek, MI	09/05/08	09/04/08
63992	Owens-Corning Composite Materials (Wkrs)	Anderson, SC	09/05/08	08/23/08
63993	Stanley-Bostitch, Inc. (State)	Clinton, CT	09/05/08	09/04/08
63994	Johnson Controls Interior Manufacturing (Comp)	Hartland, MI	09/05/08	08/20/08
63995	Wyeth Biotech (Wkrs)	Andover, MA	09/05/08	09/05/08
63996	MPC Computers, LLC—Nampa (Comp)	Nampa, ID	09/05/08	09/04/08

[FR Doc. E8–21838 Filed 9–18–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before October 20, 2008.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov*.

2. *Facsimile:* 1–202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists, which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2008–039–C through M–2008–043–C.

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, PA 15650.

Mine: Dora 8 Mine, MSHA I.D. No. 36–08704, located in Jefferson County, Pennsylvania; Ondo Extension Mine, MSHA I.D. No. 36–09005, Nolo Mine, MSHA I.D. No. 36–08850, Gillhouser Run Mine, MSHA I.D. No. 36–09033, all located in Indiana County, Pennsylvania; and Madison Mine, MSHA I.D. No. 36–09127, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of deluge-type water spray systems installed at belt conveyor drives in lieu of using blow-off dust covers. The petitioner proposes to have a person who is trained in the testing procedure specific to the deluge-type water spray fire suppression systems conduct examinations on a weekly basis as follows: (1) Conduct a visual examination of each deluge-type water spray fire suppression system; (2) conduct a functional test of each deluge-type water spray system fire suppression system and observe its performance weekly instead of annually; and (3) record the results of the examination and functional test in a book maintained on the surface, which would be retained and made available to the authorized representative of the Secretary. The petitioner states that: (1) Any malfunction or clogged nozzle detected as a result of the weekly examination or functional test will be corrected immediately; (2) the proposed alternative will provide a greater measure of protection because the weekly functional tests will ensure that the system functions properly and that all deluge-type nozzles respond as designed with adequate pressure and flow rates; and (3) the methods and conditions in this petition will be included in the initial and annual refresher training as required in its approved Part 48 training plans to ensure that the miners are aware of the stipulations contained in the petition. The petitioner asserts that the proposed alternative method at all times guarantees no less than the same measure of protection afforded by the standard.

Docket Number: M–2008–002–M.

Petitioner: East Tennessee Zinc Company, LLC, P.O. Box 160, 2421 W. Old Andrew Johnson Highway, Strawberry Plains, TN 37871.

Mine: Coy Mine, MSHA I.D. No. 40–00166 and Young Mine, MSHA I.D. No. 40–00168, both located in Jefferson County, Tennessee; and Immel Mine, MSHA I.D. No. 40–00170, located in Knox County, Tennessee.

Regulation Affected: 30 CFR 57.11052(d) (Refuge areas).

Modification Request: The petitioner requests a modification of the existing standard related to compressed air lines, water lines, suitable hand tools, and stopping materials to permit an alternative method of compliance to use self-supporting refuge chambers. The petitioner states that: (1) The refuge chambers presently used (Strata Safety Mine Refuge Chamber) contain an internal air supply with a carbon dioxide scrubber; (2) in the event of main power failure, the unit has a built in battery back-up, which will operate for a minimum of 48 hours; (3) the chambers have enough food, water and bathroom facilities for the designated occupancy; and (4) the chambers meet the intent of the proposed rules for refuge alternatives for underground coal mines even though they are being utilized in an underground metal mine. The petitioner further states that: (1) The chambers are used in a non-combustible environment so the control systems are electrical; (2) by allowing the use of refuge chambers that do not require air and water lines to be connected, there will be greater flexibility in usage location; (3) flexibility will allow the refuge chambers to be relocated quickly to working areas as the work face advances; and (4) by having air and water inside the chamber, there is minimal opportunity for damage to these services from normal mining operations (i.e. scaling, blasting, etc.) thus making them a safety improvement. The petitioner asserts that the alternative method would provide the same degree of safety as the existing standard.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E8–21897 Filed 9–18–08; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

National Science Board

Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Monday, September 22, 2008, at 8 a.m.

PLACE: University of Alaska Fairbanks, Elvey Building, Globe Room, Fairbanks, AK 99775.

STATUS: Some portions open, some portions closed

Open Sessions

September 22, 2008

8 a.m.–8:10 a.m.
8:10 a.m.–11:15 a.m.
11:15 a.m.–12 p.m.

Closed Sessions

September 22, 2008

1:30 p.m.–2:15 p.m.
2:15 p.m.–2:30 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, *rwebber@nsf.gov*, (703) 292–7000, *http://www.nsf.gov/nsb/.*

Matters To Be Discussed

Monday, September 22, 2008

Open Session: 8 a.m.–8:10 a.m.
- Chairman's Introduction and University of Alaska Fairbanks Welcome
- Committee on Programs and Plans (CPP)

Open Session: 8:10 a.m.–11:15 a.m.
- Approval of August 2008 CPP Minutes
- Committee Chairman's Remarks
- Task Force on Sustainable Energy (SE)
- SE Task Force Co-Chairmen's Remarks
- Discussion and Summary of September 4, 2008 Roundtable Discussion
- Discussion of Possible Recommendations for Inclusion in a Draft Report
- Discussion of upcoming Task Force Activities

NSB Information Item: National Nanotechnology Infrastructure Network (NNIN).
- Review of NSF Major Research Facilities and the Major Research Equipment and Facilities Construction (MREFC) Process
- Major Research Facilities and Facility Plan: Horizon Projects; Maintenance and Operations Planning for Large Facilities; and Policy Issues
- Review of MREFC Process Discussion
- Plenary Open

Open Session: 11:15 a.m.—12 p.m.
- Approval of August 2008 Minutes
- Resolution to Close December 2008 Meeting
- Chairman's Report
- Director's Report
- Open Committee Report
- Committee on Programs and Plans (CPP)

Closed Session: 1:30 p.m.—2:15 p.m.
- Chairman's Remarks
- NSB Information Item: National Astronomy and Ionosphere Center (NAIC)
- NSB Action Item: Management and Operations of the National Optical Astronomy Observatory and the National Solar Observatory
- Plenary Closed

Closed Session: 2:15 p.m.—2:30 p.m.
- Approval of August 2008 Minutes
- Awards and Agreements
- Closed Committee Reports

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E8–21804 Filed 9–18–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Notice of Availability of Draft Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction to Notice of Availability.

SUMMARY: On July 28, 2008, the U.S. Nuclear Regulatory Commission (NRC) issued a notice for public comment of a Draft Generic Environmental Impact Statement (Draft GEIS) that identifies and evaluates on a programmatic basis, the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning at *in-situ* leach (ISL) uranium milling facilities located in particular regions of the western United States (73 FR 43795).

In that notice, the NRC also provided information on eight public meetings to be hosted by the NRC that would allow the NRC staff to present an overview of the Draft GEIS and to accept oral and written public comments on the Draft GEIS from interested members of the public. Corrected dates and associated information is provided below for two of those meetings:

Meeting Date: September 23, 2008, 7 p.m. to 9:30 p.m.

Meeting Location: Best Western Tower West Lodge, 109 North U.S. Highway 14 & 16, Gillette, WY 82716, Phone (307) 686–2210.

Meeting Date: September 25, 2008, 7 p.m. to 9:30 p.m.

Meeting Location: Best Western Ramkota Hotel, 800 N. Poplar Road, Casper, WY 82601, Phone (307) 266–6000.

For each meeting, members of the NRC staff will be available for informal discussions with members of the public from 6 p.m. to 7 p.m. The formal meeting and associated NRC presentation will begin at 7 p.m. Interested persons may register to speak at the meetings. Depending on the number of speakers for a meeting, each speaker may be limited in the amount of time allocated for their comments so that all speakers will have an opportunity to offer comments.

DATES: The public comment period on the Draft GEIS began on July 28, 2008, and continues until October 7, 2008. Written comments should be submitted as described in the **ADDRESSES** section of this notice. The NRC will consider comments received or postmarked after that date to the extent practical.

ADDRESSES: Members of the public are invited and encouraged to submit comments on the Draft GEIS to the Chief, Rulemaking, Directives, and Editing Branch, *Mailstop:* T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The NRC encourages comments submitted electronically to be sent to *NRCREP.Resource@nrc.gov.* Please include ''Uranium Recovery GEIS'' in the subject line when submitting written comments.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC's NEPA process, or the environmental review process related to the Draft GEIS, please contact James Park, Project Manager, Division of Waste Management and Environmental Protection (DWMEP), Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington DC 20555–001, by phone at 1 (800) 368–5642, extension 6935. For general or technical information associated with the safety and licensing of uranium milling facilities, please contact William Von Till, Branch Chief, Uranium Recovery Branch, DWMEP, Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1 (800) 368–5642, extension 0598.

The Draft GEIS may be accessed on the Internet at *www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1910.'' Additionally, the NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The Draft GEIS and its appendices may also be accessed through the NRC's Public Electronic Reading Room on the Internet at:

www.nrc.gov/reading-rm/adams.html. If you either do not have access to ADAMS or if there is a problem accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1 (800) 397–4209, 1 (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Information and documents associated with the Draft GEIS are also available for public review through the NRC Public Electronic Reading Room on the Internet at *www.nrc.gov/reading-rm/adams.html* and at the NRC's Web site for the GEIS, *www.nrc.gov/materials/fuel-cycle-fac/licensing/geis.html.* Both information and documents associated with the Draft GEIS also are available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. For those without access to the Internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 1–800–397–4209. The draft GEIS and related documents may also be found at the following public libraries:

Albuquerque Main Library, 501 Copper NW, Albuquerque, New Mexico 87102, 505–768–5141,

Mother Whiteside Memorial Library, 525 West High Street, Grants, New Mexico 87020, 505–287–4793,

Octavia Fellin Public Library, 115 W Hill Avenue, Gallup, New Mexico 87301, 505–863–1291,

Natrona County Public Library, 307 East Second Street, Casper, Wyoming 82601, 307–332–5194,

Carbon County Public Library, 215 W Buffalo Street, Rawlins, Wyoming 82301, 307–328–2618,

Campbell County Public Library, 2101 South 4J Road, Gillette, Wyoming 82718, 307–687–0009,

Weston County Library, 23 West Main Street, Newcastle, Wyoming 82701, 307–746–2206,

Chadron Public Library, 507 Bordeaux Street, Chadron, Nebraska 69337, 308–432–0531,

Rapid City Public Library, 610 Quincy Street, Rapid City, South Dakota 57701, 605–394–4171.

SUPPLEMENTARY INFORMATION: As stated previously, the NRC is accepting comments on the Draft GEIS. Following the end of the public comment period, the NRC staff will publish a Final GEIS that addresses, as appropriate, the public comments on the Draft GEIS. The NRC expects to publish the Final GEIS by June 2009.

Dated at Rockville, Maryland, this 15th day of September 2008.

For the U.S. Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–21908 Filed 9–18–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011]

Southern Nuclear Operating Company; Notice of Availability of Errata Sheet for the Final Environmental Impact Statement (FEIS) for an Early Site Permit (ESP) Application at the Vogtle Electric Generating Plant Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published an errata sheet for NUREG–1872, ''Final Environmental Impact Statement (FEIS) for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site.'' The site is located on the southwest side of the Savannah River in eastern Burke County, Georgia. A notice of availability (NOA) of the final EIS was published in the **Federal Register** on August 21, 2008 (73 FR 49496).

The purpose of this notice is to inform the public that the errata sheet for NUREG–1872, ''Final Environmental Impact Statement (FEIS) for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site,'' Volumes 1 and 2, is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (First Floor) Rockville, Maryland 20852 or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC Web site at *http://www.nrc.gov.* ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). The ADAMS accession number for the errata sheet is ML082550040. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the PDR reference staff by telephone at 1–800–397–4209 or 1–301–415–4737 or online at *http://www.nrc.gov/reading-rm/contact-pdr.html.* In addition, the following public library in the vicinity of the Vogtle ESP Site has agreed to make the errata sheet available for public inspection: Burke County Library, 130 Highway 24 South, Waynesboro, GA 30830.

FOR FURTHER INFORMATION CONTACT: Mark Notich, Environmental Projects Branch 1, Division of Site and Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Notich may be contacted by telephone at 301–415–3053 or by e-mail at *mark.notich@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of September 2008.

For the Nuclear Regulatory Commission.

Scott Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E8–21922 Filed 9–18–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS): Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 1, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 1, 2008, 12 p.m. until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. 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 Officer, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of

and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 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 in the agenda.

Dated: September 11, 2006.

Antonio Dias,

Branch Chief, ACRS.

[FR Doc. E8–21915 Filed 9–18–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Notice of Receipt of an Application To Transfer the Control of Special Nuclear Materials License No. SNM–124; Opportunity To Request a Hearing and Provide Written Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of license transfer application and opportunity to request a hearing.

DATES: A request for a hearing must be filed by October 9, 2008, in accordance with 10 CFR 2.309(b)(1).

FOR FURTHER INFORMATION CONTACT: Mary T. Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2–C40M, Washington, DC 20555–0001, *Telephone:* (301) 492–3113; *fax number:* (301) 492–5539; *e-mail: Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated August 8, 2008, (the Application), Nuclear Fuel Services, Inc., (NFS or the licensee) requested the consent of the U.S. Nuclear Regulatory Commission (NRC or the Commission), to the indirect transfer of Special Nuclear Materials License No. SNM–124 (SNM–124) to NOG-Erwin Holdings, Inc., and approval of a conforming amendment to SNM–124. The need for the requested consent arises from the sale by NFS Services, LLC, (''NFS Services'') to NOG-Erwin Holdings, Inc., (''NOG'') of NFS Services' entire interest in Nuclear Fuel Services, Inc. (the ''Transaction''). Included in the Transaction, as more fully described in the application, is the transfer by NFS Services of 100% of the stock of NFS Holdings, Inc., a Delaware corporation and its wholly-owned subsidiary, Nuclear Fuel Services, Inc. a Delaware corporation which is the holder of the License, to NOG-Erwin Holdings, Inc. (''NOG''), a newly-formed subsidiary of Babcock & Wilcox Nuclear Operations Group, Inc., a Delaware corporation, which is a wholly-owned subsidiary of BWX Technologies, Inc., a Delaware corporation, which in turn is a wholly-owned subsidiary of The Babcock & Wilcox Company, a Delaware corporation. The Transaction, if approved, will result in the indirect change of control of NFS, the holder of the License, from NFS Services to NOG.

NFS is the holder of SNM–124, which authorizes NFS to receive, possess, and use special nuclear material for the research, fabrication and assembly of nuclear fuel and related components at its facilities located in Erwin, Tennessee. The license provides, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC, now or hereafter in effect. SNM–124 applies to product processing operations, laboratory operations, general services operations, research and development operations, and waste treatment and disposal operations located in Unicoi County, Tennessee.

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 2.1301, the Commission is noticing in the **Federal Register** the receipt of the Application for approval of the transfer of SNM–124 because it involves a major fuel cycle facility licensed under 10 CFR Part 70. The NRC is considering the issuance of an order pursuant to 10 CFR 70.36, authorizing the transfer of control of SNM–124 from NFS to NOG-Erwin Holdings, Inc. An amendment to the existing license would follow the issuance of the order. According to the Application, NOG-Erwin Holdings, Inc., would acquire ownership of the NFS facilities and upon approval of the license transfer would be the licensee responsible for operating and maintaining them. The Application does not propose any physical changes to the facilities or other changes.

The amendment would replace references to NFS, Inc., in Section 1.1 and Appendix D to Chapter 1 of the license with references to NFS Holdings, Inc.; NOG-Erwin Holdings, Inc.; and Babcock & Wilcox Nuclear Operations Group, Inc., to reflect the transfer, if approved by the Commission.

Pursuant to 10 CFR 70.36, no license, or any right there under, shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through the transfer of control of any license to any person unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and shall give its consent in writing. The Commission will approve an application for the transfer of a license and authorize the transfer of the license through the issuance of an order, if it is determined that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

An NRC administrative review found the application acceptable to begin a technical review. If the NRC issues an order, as described above, the approval of the above requested actions will be documented in a conforming amendment to SNM–124. However, before issuing an order and approving the amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. These findings will be documented in a safety evaluation report. The license transfer request falls within the 10 CFR 51.22(c)(21), categorical exclusion criteria, so no environmental review of the proposed action is required.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding regarding the consideration of the issuance of an order authorizing the transfer of control of Special Nuclear Materials License No. SNM–124. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions that the person seeks to have litigated in the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing rule requires participants to submit and serve documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of the E-Filing rule, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request: (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) the creation of an electronic docket for the proceeding [even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Instruction for applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, has created a docket, and downloads the EIE viewer, he or she can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF), in accordance with NRC guidance that is available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document, to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents to each participant separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., eastern time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing, requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, Rockville, Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document to all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)—(viii). To be timely, filings must be submitted no later than 11:59 p.m. eastern time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order by the Commission, an Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding in the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth, with particularity, the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions that support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the Application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the Application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the

Application, or other supporting documents filed by the licensee or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

III. Written Comments

In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding the license transfer application. These comments must be submitted by October 20, 2008, in accordance with 10 CFR 2.1305(b). The Commission will address the comments received in accordance with 10 CFR 2.1305(c). Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments received after 30 days will be considered if practicable to do so, but only the comments received on or before the due date can be assured consideration.

IV. Further Information

Documents related to this action including the Application for the proposed license transfer and supporting documentation, are available electronically through 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 Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the publicly-available documents related to this notice is ML082390922.

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@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 Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Peter Habighorst,

Chief, Fuel Manufacturing Branch, Fuel Facilities Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E8–21916 Filed 9–18–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17a–19; OMB Control No. 3235–0133; SEC File No. 270–148.

Form X–17A–19

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 approval of extension of the existing collection of information provided for in the following rule: Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 (17 CFR 249.635) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17a–19 requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission within 5 business days of the initiation, suspension, or termination of any member, and when terminating the membership interest of any member, to notify that member of its obligation to file financial reports as required by Exchange Act Rule 17a–5(b) (17 CFR 240.17a–5).

The Commission uses the information contained in Form X–17A–19 to assign the appropriate self-regulatory organization to be the designated examining authority for the member firm. This information is also used by the Securities Investor Protection Corporation (''SIPC'') in determining which self-regulatory body is the collection agent for the SIPC fund.

The information requested by Form X–17A–19 is obtained from the respondent's membership files. The Commission staff estimates that, in its experience, Form X–17A–19 can be completed and signed within 15 minutes. The number of responses per year per respondent varies, depending on the number of membership changes reported. The number of filings is approximately 600 per year. The aggregate time spent by all respondents per year in complying with the rule is therefore approximately 150 hours (600 responses times 1/4 hour equals 150 hours).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

September 10, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21765 Filed 9–18–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 12d2–2, SEC File No. 270–86, OMB Control No. 3235–0080 Form 25]

Proposed Collection; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, office of Investor Education and Advocacy, Washington, DC 20549–0213

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'') is soliciting comments on the collection of information summarized below. The Commission

plans to submit this existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25) Removal and Notification of Removal from Listing and/or Registration.

On February 12, 1935, the Commission adopted Rule 12d2–2,[1] and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) (''Act''), to establish the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.[2] The Commission adopted amendments to Rule 12d2–2 and Form 25 in 2005.[3] Under the amended Rule 12d2–2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d–1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt options and security futures from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting. Without Rule 12d2–2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are ten national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2–2 and Form 25.[4] The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and the American Stock Exchange LLC than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 994 responses under Rule 12d2–2 and Form 25 for the purpose of delisting equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 994 annual burden hours for all exchanges. In addition, since approximately 371 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 371 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 1,365 hours. The related costs associated with these burden hours are $76,177.50.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: September 15, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21902 Filed 9–18–08; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Securities Exchange Act Release No. 98 (February 12, 1935).

[2] *See* Securities Exchange Act Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[4] The staff notes that there are two additional national securities exchanges that only trade standardized options which, as noted above, are exempt from Rule 12d2–2.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: EA Industries, Inc., Ebiz Enterprises, Inc., and Einstein Noah Bagel Corp. (n/k/a ENBC Corp.); Order of Suspension of Trading

September 17, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EA Industries, Inc. because it has not filed any periodic reports since the period ended June 27, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ebiz Enterprises, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Einstein Noah Bagel Corp. (n/k/a ENBC Corp.) because it has not filed any periodic reports since the period ended April 24, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 17, 2008, through 11:59 p.m. EDT on September 30, 2008.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8–22071 Filed 9–17–08; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58546; File No. SR–BATS–2008–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.5, Entitled ''Orders and Modifiers,'' To Provide for a New Order Type—Modified Destination Specific Order

September 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 2008, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.5, entitled ''Orders and Modifiers,'' to provide for a new order type, a Modified Destination Specific Order.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an additional order type to Users of the Exchange. The proposed new order type is a ''Modified Destination Specific Order,'' which is a market or limit order that instructs the System to route the order to a specified away trading center or centers as approved by the Exchange from time to time. Such trading centers may include execution venues know as ''dark books.'' The order would not be exposed to the BATS Book before being routed to a specified destination or destinations. An order that is not executed in full after routing away would return to the Exchange, receive a new timestamp, and be processed in the manner described in Rule 11.9(a)(2). The routing performed in connection with this new order type will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the ''Outbound Router''), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),[4] subject to Section 6 of the Act.[5] The role and functions of the Outbound Router are set forth in BATS Rule 2.11, which has previously been approved by the Commission. Routing of Modified Destination Specific Orders will be subject to the same requirements as other orders routed by the Outbound Router, which are contained in Rule 2.11. Accordingly, the Exchange believes that routing of Modified Destination Specific Orders is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the addition of this order type.

The Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange. Accordingly, the addition of a Modified Destination Specific Order type to BATS Rule 11.5 promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is non-controversial and does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange believes that the addition of the new order type, a Modified Destination Specific Order, is consistent with other rules of the Exchange previously approved by the Commission, including: (1) Its Destination Specific Order, which operates similarly to the proposed order type, except that a Destination Specific Order does not bypass the BATS Book when first received by the Exchange,[10] and (2) Rule 2.11, which governs the Outbound Router of the Exchange. Furthermore, the Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78c(a)(2).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78(f)(b). [sic]

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Upon request from BATS, the Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing. 17 CFR 240.19b–4(f)(6)(iii).

[10] *See* BATS Rule 11.5(c)(10).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2008–003 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BATS–2008–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2008–003 and should be submitted on or beforeOctober 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21947 Filed 9–18–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58550; File No. SR–NYSE–2008–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Determine That a Company Meets the Exchange's Market Value Requirements by Relying on a Third-Party Valuation of the Company

September 15, 2008.

I. Introduction

On July 31, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Exchange, on a case by case basis, to exercise discretion to list a company whose stock is not previously registered under the Act and that is listing upon effectiveness of a selling shareholder registration statement without a related underwritten offering, by relying on an independent third-party valuation of the company and information regarding trading in a private placement trading market to determine that such a company has met its market value requirements. The proposed rule change was published for comment in the **Federal Register** on August 11, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Section 102.01B of the Exchange's Listed Company Manual (''Manual'') currently requires that companies listing on the Exchange in connection with their initial public offering (''IPO'') or as a result of a spin-off or under the Affiliated Company standard must demonstrate an aggregate market value of publicly-held shares of $60 million at the time of listing. All other companies must demonstrate a market value of publicly-held shares of $100 million.[4] In addition, the Valuation/Revenue with Cash Flow, Pure Valuation/Revenue, and Affiliated Company standards of Section 102.01C require a company to have a global market capitalization of $500 million, $750 million, and $500 million, respectively. Sections 102.01B and 102.01C of the Manual provide that, in connection with a company's IPO, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with these listing standards. In the case of a spin-off, the company may rely on a letter from the parent company's investment banker or other financial adviser.

The Exchange notes that it has been approached by a number of private companies that would like to list upon the effectiveness of a selling shareholder registration statement. NYSE represents that these private companies typically have sold a significant amount of common stock to qualified institutional buyers in one or more private placements and, as a condition to those sales, have agreed to file a registration statement to facilitate the resale of the privately-placed shares. These companies have not had any prior public market for their common stock and are not contemplating an underwritten offering in connection with their selling shareholder registration statement. As such, the company would not be able to obtain a written representation from an underwriter to determine compliance with the market value requirements, as a company would in the case of an IPO, and the Exchange cannot rely on trading on any predecessor public market to evaluate the company's market value, as would be possible with a company transferring from another market. Thus, while the company may meet all of the Exchange's other listing criteria, the company would not be able to satisfy NYSE's current market value requirements in Sections 102.01B and 102.01C of the Manual.

The Exchange proposes to amend Sections 102.01B and 102.01C of the Manual to provide that the Exchange will, on a case by case basis, exercise discretion to list a company whose stock is not previously registered under the Exchange Act, where such company is listing, without a related underwritten offering, upon effectiveness of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58299 (August 4, 2008), 73 FR 46670.

[4] Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares.

registration statement registering only the resale of shares sold by the company in earlier private placements. Specifically, the Exchange proposes that, for such companies, the Exchange will have the discretion to determine that the company has met the applicable market value requirements by attributing a market value to the company equal to the lesser of: (i) The value calculated based on an independent third-party valuation of the company (''Valuation''); and (ii) the value calculated based on the most recent trading price of the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (''Private Placement Market'').

The proposed rule change further provides that any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing, and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement and the financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement.

The proposed rule change also provides that the Exchange will consider any market factors, or factors particular to the listing applicant, that would cause concern that the value of the company had diminished since the date of the Valuation. In addition, the Exchange will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the applicable standard. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

Companies listed on the basis of these new provisions will be required to meet the $100 million test applied to companies transferring from another market under Section 102.01B, rather than the $60 million IPO standard. Companies listing under the Valuation/Revenue with Cash Flow standard of Section 102.01C(II)(a) of the Manual and the Affiliated Company standard of Section 102.01C(III) will be required to have a global market capitalization of $600 million, rather than the usual $500 million requirement. Companies listing under the Pure Valuation/Revenue standard of Section 102.01C(II)(b) will be required to have $900 million of global market capitalization, rather than the usual $750 million requirement.

The Exchange also notes that any company listing in reliance upon this proposed amendment will still be required to meet the IPO distribution requirements of Section 102.01A, *i.e.,* 400 beneficial holders of round lots of 100 shares and 1,100,000 publicly held shares. The Exchange states that it will rely upon information provided by the company's transfer agent in determining whether the company meets the holder requirement. The Exchange also states that it will be able to determine compliance with the 1,100,000 publicly held shares requirement by reviewing the disclosure in the company's registration statement.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[7]

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

The Commission believes that the proposed rule change will provide a means for a narrow category of companies whose stock is not previously registered under the Act and that are listing upon effectiveness of a selling shareholder registration statement, without a related underwritten offering, to list on the Exchange. In particular, for such companies that otherwise meet NYSE's listing standards,[8] the proposed rule change will allow the Exchange to have the discretion to determine that a company has met the market value requirement by attributing a market value to the company equal to the lesser of the value calculated based on a third-party Valuation and the value calculated based on the most recent trading price in a Private Placement Market. The Commission believes that using the lesser of these values to determine the market value of the company provides a reasonable means of assessing the market value of the company in these special circumstances where a company's stock is not previously registered under the Act and is listing upon effectiveness of a selling shareholder registration statement, without a related underwritten offering.

The Commission recognizes that each value, by itself, has limitations. As NYSE noted in its proposal, the Valuation is only an estimate of what a company's true market value will be upon commencement of public trading. Further, the most recent trading price in a Private Placement Market may be an imperfect indication as to the value of a security upon listing, in part because the Private Placement Markets generally do not have the depth and liquidity and price discovery mechanisms found on public trading markets. However,

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] Companies listing upon an effective registration statement would have to meet the distribution requirements set forth in Section 102.01A and comply with all applicable NYSE corporate governance requirements.

recognizing these limitations, the Commission agrees with the Exchange that consideration of both of these values should provide the Exchange with an estimation of a company's market value that supports listing the company on the Exchange. In addition, the proposed rule is designed to ensure that the Valuation is reliable by providing that the Valuation must be provided by an entity that has significant experience and demonstrable competence in providing valuations of companies, and must be of a recent date as of the time of the approval of the company for listing. Further, by assuming a market value equal to the *lesser* of the Valuation and a value based on the most recent Private Placement Market trading, the Exchange will be using the more conservative estimate of a company's market value.

In addition, the Commission notes that companies listing under this alternative provision will be required to meet higher market value standards. Specifically, companies will have to meet the $100 million transfer market value requirement, rather than the $60 million IPO requirement of Section 102.01B. Further, companies will be required to meet global market capitalization standards in Section 102.01C of the Manual that are 20% higher than the normal standards.[9]

The Commission notes that it expects the vast majority of companies to continue to list in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off, and that this proposed alternative standard will be used by the Exchange at its discretion. In particular, in accordance with the terms of the proposed rule, the Exchange will apply this standard only for the very narrow category of companies that are seeking to list their common equity securities on the Exchange without an underwritten offering at the time of effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. Further, the Commission expects the Exchange to utilize its discretion only after thorough consideration and evaluation of the specific company and all relevant factors. Specifically, the proposed rule change requires the Exchange to consider the appropriateness of relying on Private Placement Market trading in light of the price trends for the stock over a period of several months and only rely on a Private Placement Market price if consistent with a sustained history evidencing a market value in excess of the listing requirement. In relying on such Private Placement Market, the Commission expects the NYSE to consider the trading characteristics of the stock, including its trading volume and price volatility over a sustained period of time. In addition, in relying on the Valuation, the Exchange must consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of Valuation and continue to monitor the company and the appropriateness of relying on the Valuation up until the time of listing. The Commission expects that where these factors indicate that the value calculated may not be an accurate estimation of a company's market value, the Exchange will use its discretion to determine not to list such company pursuant to the proposed provisions. In general, the Commission expects that the Exchange will deny listing to any company seeking to list pursuant to the proposed rule change if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest.

The Commission also notes that companies listing pursuant to the new proposed provision will still be required to meet the IPO distribution requirements of Section 102.01A of the Manual, *i.e.*, that the company have 400 beneficial holders of round lots of 100 shares and 1,100,000 publicly held shares. The Commission believes that these existing provisions will continue to help ensure that the company has the requisite liquidity for listing on the Exchange.[10] The Exchange's reliance on the transfer agent for assurance that the holder requirement is met, and on the disclosure in the company's registration statement for assurance that the publicly held shares requirement is met, will ensure that these important liquidity requirements are verified before a company may qualify for listing.

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2008–68) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21944 Filed 9–18–08; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Section II, Description of the Proposal, *supra*.

[10] *See also* note 8 *supra*. The Commission notes that once listed, the company would have to comply with the continued listing standards like other companies. The NYSE has not proposed any changes to the continued listing standards for companies listing under the provisions approved herein. *See* Section 802 of the Manual.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58549; File No. SR–NYSE–2008–80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Conforming Certain NYSE Rules to Changes to NYSE Incorporated Rules Recently Filed by the Financial Industry Regulatory Authority, Inc.

September 15, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 5, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On September 11, 2008, the Exchange filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain New York Stock Exchange (''NYSE'' or the ''Exchange'') Rules to conform with proposed amendments to certain NYSE Incorporated Rules (defined below) recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'')[4] to reduce regulatory duplication and relieve firms that are members of both FINRA and the Exchange of conflicting or unnecessary regulatory burdens in the interim period

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58533 (September 12, 2008) (SR–FINRA–2008–036).

prior to completion of a consolidated FINRA rulebook.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 30, 2007, NASD and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA.[5] As noted above, pursuant to its new regulatory responsibilities, FINRA recently filed proposed amendments to certain NYSE Incorporated Rules (and applicable Rule Interpretations). The NYSE hereby proposes to amend its version of these same rules to conform to the proposed changes filed by FINRA.

The amendments proposed by FINRA fall into the following categories: [6]

• Replacing the term ''allied member'' with the newly defined category of ''principal executive'', and making corresponding technical changes as needed, in NYSE Incorporated Rules 2, 2A, 311–313, 321, 342, 345, 345A, 346, 351–354, 401, 405, 407–410, 414, 424, 431, 435, 440F, 440G, 477, 704, 705, 723, 724 and 791.

• Repositioning and consolidating certain NYSE Incorporated Rules. In order to consolidate all ''Buy-In'' requirements and procedures into one rule, FINRA proposes to reposition NYSE Incorporated Rule 283 and 285–290 as supplementary material in NYSE Incorporated Rule 282, and to make conforming changes to NYSE Incorporated Rule 134. FINRA also proposes to move certain provisions of NYSE Incorporated Rule 407 to Common Rule 346.

• Deleting NYSE Incorporated Rules that are obsolete or no longer applicable, including Rules 311(h) and 436.

• Eliminating certain provisions of NYSE Incorporated Rules that do not have a corresponding NASD equivalent, and therefore are deemed unnecessary rules, including the training requirements and registration for ''securities trader'' under Rule 345, Rule 345(b) and Rule 346(c).

• Additional amendments to further harmonize certain NYSE and NASD Rules, including NYSE Incorporated Rules 342.13(a), 346(e), 346.10, 351.13, 352(c) and (d), and 408(a). In order to further harmonize NYSE Incorporated Rule 282 with NASD's 11000 Rule Series, FINRA also proposes to add as supplementary material the substance of NYSE Rule 140 and provisions from NASD Rule 11810.

• Deleting NYSE Incorporated Rules that are substantively duplicative of existing NASD Rules and procedures, including Rules 404, 412 and 446. Similarly, FINRA proposes limiting application of NYSE Incorporated Rule 345(a) to securities lending representatives and supervisors only, since registered representatives and their supervisors are already addressed by NASD Rule 1031. For these particular proposed changes, the Exchange proposes to amend NYSE Rules 404, 412, 446 and 345(a) to incorporate by reference the applicable NASD Rules that will be applied by FINRA going forward.[7]

The Exchange proposes to amend its version of the above-referenced NYSE Incorporated Rules to conform to FINRA's proposed rule changes. The Exchange proposes that the operative date of the proposed rule changes be the same as the operative date of FINRA's proposed amendments to the NYSE Incorporated Rules and Rule Interpretations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) [8] of the Act, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule changes will provide greater harmonization between NYSE Incorporated Rules and NASD Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for their members. Where proposed amendments do not entirely conform to existing NYSE Incorporated or NASD Rules or address a provision without a direct counterpart, the Exchange believes the standards the proposed amendments establish further the objectives of the Exchange Act by providing greater regulatory clarity and relieving unnecessary regulatory burdens in the interim period until a Consolidated Rulebook is completed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the

[5] Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), NYSE, NYSE Regulation, Inc., and NASD entered into an agreement (the ''Agreement'') to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on or after July 30, 2007 (''Dual Members''), by allocating to FINRA certain regulatory responsibilities for selected NYSE rules. The Agreement includes a list of all of those NYSE and NASD rules for which FINRA has assumed regulatory responsibilities (''Common Rules''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include those NYSE rules that FINRA has incorporated into its rulebook (the ''NYSE Incorporated Rules''). *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR–NASD–2007–054). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[6] For more detail, *see* Securities Exchange Act Release No. 58103 (July 3, 2008), 73 FR 40403 (July 14, 2008) (SR–FINRA–2008–036).

[7] The Exchange recognizes that the proposed amendments to NYSE Rules 404, 412, 446 and 345(a) will remove these Rules from their status as Common Rules under the 17d–2 Agreement. Notwithstanding, FINRA will continue to provide regulatory services to the Exchange with respect to these Rules pursuant to the existing Regulatory Services Agreement, dated July 30, 2007, by and among FINRA, the Exchange and NYSE Regulation, Inc.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) at the same time that FINRA's proposed amendments become operative.

The purpose of the proposed rule change is to conform NYSE Rules to FINRA's proposed amendments to certain NYSE Incorporated Rules, in furtherance of the consolidation of the member firm regulations functions of NYSE Regulation and FINRA. NYSE requests that the operative date of the proposed rule change be the same as the operative date of FINRA's proposal in order to ensure that the NYSE Rules maintain their status as Common Rules under the 17d–2 Agreement. As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will, absent a disagreement about the substance of a proposed rule change to one of the Common Rules, promptly propose conforming changes to ensure that such rules continue to be Common Rules under the Agreement. For this reason, the Commission designates that the proposed rule change has become operative as of September 12, 2008.[14]

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2008–80 and should be submitted on or before October 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

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[15] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 11, 2008, the date on which the Exchange submitted Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58518; File No. SR–NYSEArca–2008–94]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Equities Rules 5.1(b)(14) and 5.2(j)(2) To Permit the Listing of ELNs That Are Linked to Securities Issued by Companies Registered Under the Investment Company Act of 1940

Date: September 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] (the ''Exchange Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.1(b)(14), the Exchange's definition of Equity-Linked Notes (''ELNs''), and NYSE Arca Equities Rule 5.2(j)(2), the Exchange's listing standards for ELNs, to permit the listing of ELNs that are linked to securities that are issued by companies registered under the Investment Company Act of 1940 (''1940 Act'')[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 80a–1.

and are listed on a national securities exchange. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 5.1(b)(14), the Exchange's definition of ELNs, and NYSE Arca Equities Rule 5.2(j)(2), the Exchange's listing standards for ELNs, to permit the listing of ELNs that are linked to securities that are issued by companies registered under the 1940 Act and are listed on a national securities exchange, as set forth below. This proposal is based upon the Exchanges listing rules for Equity Index-Linked Securities which allow underlying indexes to be based in whole or in part upon companies registered under the 1940 Act and are listed on a national securities exchange.[5]

Definition of ELN

NYSE Arca Equities Rule 5.1(b)(14) currently defines ELNs as notes that are linked, in whole or in part, to the market performance of up to thirty (30) common stocks or non-convertible preferred stocks. The Exchange proposes to amend the Rule to define ELNs as notes that are linked, in whole or in part, to the market performance of up to thirty (30) underlying equity securities that meet the criteria in NYSE Arca Equities Rule 5.2(j)(2). The Exchange believes that it is more appropriate to set forth the criteria for the underlying securities in the listing criteria for ELNs rather than in the definitions section. Further, the Exchange believes that the cross-reference serves a useful purpose in that it alerts readers to the fact that the Exchange has listing criteria for ELNs and where it can be found. In addition, the Exchange proposes this change in order to avoid the administrative burden of amending the definition each time that the Exchange proposes to amend the ELN listing criteria.

The Linked Securities

NYSE Arca Equities Rule 5.2(j)(2)(C) currently provides minimum standards applicable to the linked securities and the issuers of such securities. Under NYSE Arca Equities Rule 5.2(j)(2)(C)(ii), each issuer of an underlying security to which an ELN is to be linked must be a reporting company pursuant to the Exchange Act that is listed on a national securities exchange. The Exchange proposes to expand this provision to provide that an issuer of an underlying security to which an ELN is to be linked may also be a 1940 Act registered investment company. In addition, the Exchange proposes to further clarify the Rule to state that, in either case, any underlying security to which the ELN is to be linked must be listed on a national securities exchange.

The Exchange believes that expanding the listing criteria for ELNs to encompass notes that are linked to the securities of investment companies will provide investors with enhanced investment options and flexibility. The Exchange also believes that there would be no investor protection concerns with this expansion because each linked security is required to individually satisfy the applicable listing standards set forth in Rule 5.2(j)(2), including that the investment company be registered under the 1940 Act and that the underlying securities be listed on a national securities exchange. The Exchange also believes that the availability of financial information for the underlying securities of 1940 Act registered investment companies, like the Exchange Act reporting companies, have disclosure obligations under the federal securities laws. The Exchange believes that such information serves to protect investors and the public interest.

The Exchange notes that 1940 Act registered investment company securities trade on the same exchange platforms as equity securities registered under the Exchange Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit 1940 Act registered investment companies to be an underlying security for ELNs.

In NYSE Arca Equities Rule 5.2(j)(2)(C)(ii)(2), the Exchange proposes to replace the term ''common stock'' with the term ''shares'' in order to take into account that certain underlying securities, particularly those that are securities issued by 1940 Act registered investment companies, are not labeled ''common stock.'' Similarly, in NYSE Arca Equities Rule 5.2(j)(2)(D)(i), the Exchange proposes to eliminate the term ''common'' when it qualifies ''shares'' in order to take into account that certain underlying securities, particularly those that are securities issued by 1940 Act registered investment companies, are not labeled ''common shares.''

As revised, the term ''shares'' shall encompass common stock, non-convertible preferred stock and securities issued by 1940 Act registered investment companies as eligible underlying securities. Therefore, with respect to NYSE Arca Equities Rule 5.2(j)(2)(C)(ii)(2), the combined trading volume of each non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement must represent (on a share equivalent basis for any American Depository Shares (''ADSs'')) at least 50% of the combined world-wide trading volume in each such non-U.S. security, other related non-U.S. securities, and other classes of common stock, non-convertible preferred stock or securities of 1940 Act registered investment companies related to each such non-U.S. security, as the case may be, over the six month period preceding the date of listing. In addition, with respect to NYSE Arca Equities Rule 5.2(j)(2)(D)(i): (1) An issuance of ELNs relating to any U.S. security may not exceed five percent of the total outstanding common stock, non-convertible preferred stock, or securities of 1940 Act registered investment companies for each such underlying security, as the case may be; and (2) the issuance of ELNs relating to any underlying non-U.S. security represented by ADSs, common stock, non-convertible preferred stock, or securities of 1940 Act registered investment companies, or otherwise, may not exceed: (a) Two percent of the total shares outstanding of the relevant underlying security worldwide if at least 20 percent of the worldwide

[4] E-mail from Tim Malinowski, Director, NYSE Euronext, to Arisa Tinaves, Division of Trading and Markets, Commission, dated September 3, 2008.

[5] *See* NYSE Arca Equities Rule 5.2(j)(6)(B)(I). *See also* Securities Exchange Act Release No. 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (SR–NYSEArca–2007–110) (approving Equity Index-Linked Securities underlying indexes to be based in whole or in part upon companies registered under the 1940 Act and are listed on a national securities exchange).

trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing; or (b) three percent of the total shares outstanding of the relevant underlying security worldwide if at least 50 percent of the worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing; and (c) five percent of the total shares outstanding of the relevant underlying security worldwide if at least 70 percent of the worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing.[6]

Additional Technical Changes

The Exchange proposes to correct the numbering of NYSE Arca Equities Rule 5.2(j)(2)(C)(iv) to NYSE Arca Equities Rule 5.2(j)(2)(C)(iii). The Exchange also proposes to change the reference to the Division of Market Regulation to the Division of Trading and Markets in NYSE Arca Equities Rule 5.2(j)(2)(D)(i).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that expanding the listing criteria for ELNs to encompass notes that are linked to the securities of investment companies will provide investors with enhanced investment options and flexibility. The Exchange also believes that the availability of financial information for the underlying securities of 1940 Act registered investment companies, like the Exchange Act reporting companies, have disclosure obligations under the federal securities laws.

[6] E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated September 9, 2008.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–94 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–Arca–2008–94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–94 and should be submitted on or before October 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21901 Filed 9–18–08; 8:45 am]

BILLING CODE 8010–01–P

[9] E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 27, 2008.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Approval From the Office of Management and Budget of a New Information Collection Activity, Request for Comments; Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget

(OMB) to approve a new information collection. The FAA would amend the regulations governing flight data recorders to increase the number of digital flight data recorder parameters for certain Boeing airplanes.

DATES: Please submit comments by November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauneyfaa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes.

Type of Request: Reinstatement, without change, of a previously approved collection.

OMB Control Number: 2120–0616.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 2,960 Respondents.

Frequency: This is a passive information collection.

Estimated Average Burden per Response: This is a passive information collection activity. Responses are recorded automatically in the aircraft's digital flight data recorder.

Estimated Annual Burden Hours: An estimated 1 hour annually.

Abstract: The FAA would amend the regulations governing flight data recorders to increase the number of digital flight data recorder parameters for certain Boeing airplanes. This change is based on safety recommendations from the National Transportation Safety Board following its investigations of two accidents and several incidents involving 737s.

Addresses: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 12, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–21812 Filed 9–18–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Mansfield Lahm International Airport, Mansfield, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of two areas adjacent to one another of vacant land with few trees remaining along old property lines and at the edge of the approach surface, and owned by the City of Mansfield. The Parcels (#47 and 0–1) is approximately 21.571 acres. There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land for release is vacant and not required for future airport development. The intended land use is for the expansion of the Gorman-Rupp Company along Harrington Memorial Road. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie Swann, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229–2945/FAX Number: (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Mansfield Lahm International Airport, Mansfield, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of both properties situated in the State of Ohio, County of Richland, City of Mansfield, located in the Northeast Quarter of Section 3, Township 21 North, Range 18 West, and described as follows:

(Legal Description of Property).

Parcel 0–1

Beginning at a concrete monument found at the Southwest corner of said Northeast Quarter of Section 3, said being the Northeasterly corner of a parcel of land now owned by The Gorman-Rupp Company of record in Official Record Volume 514, Page 50;

Thence North 01°28′00″ West, a distance of 1270.74 feet along the westerly line of said Northeast Quarter of Section 3, to a concrete monument found on the Southerly right-of-way line of Airport Road South;

Thence the following two (2) courses and distances along and southerly right-of-way line of Airport Road South:

1. Thence North 89°01′07″ East, a distance of 10.88 feet to an iron pin;

2. Thence South 66°22′53″ East, a distance of 29.86 feet to a point at the northwesterly center of the 4.586 acre tract (clear zone);

Thence South 34°30′27″ East, a distance of 1133.89 feet along the southwesterly line of said 4.586 acre tract to a point on a curve in the westerly right-of-way line of State Route 13, at the southerly corner of said 4.586 acre tract;

Thence along said westerly right-of-way line of State Route 13, with a curve to the right, having a radius of 2850.96 feet, a central angle of 06°29′06″ an arc length of 322.68 feet, the chord to which bears South 16°45′09″ West, a chord distance of 322.51 feet to an iron pin;

Thence South 88°25′00″ West, a distance of 555.32 feet to the Point of Beginning, containing 11.870 acres, more or less, being subject to all legal highways and easements of record.

Parcel 47

Being known as a part of the Northwest Quarter of Section No. 3, Township 21 North, Range 18 West and more fully described as follows:

Commencing at a concrete monument found at the Southeast corner of the Northwest Quarter of Section No. 3, said concrete monument also being at the Southeast corner of a parcel of land now owned by The Gorman-Rupp Company,

as recorded in Official Record Volume 517, Page 79 of the Richland County Deed Records;

Thence North 01°28′00″ West, along the East Line of the Northwest Quarter of Section No. 3 and passing thru an iron pin found at 323.58 feet, a total distance of 423.58 feet to an iron pin found at the Northeast corner of the right-of-way for Rupp Avenue, said iron pin also being the true place of beginning of the parcel herein described;

Thence South 88°29′32″ West, along the North right-of-way line of Rupp Avenue, a distance of 100.00 feet to an iron pin found;

Thence South 01°28′00″ East, along the right-of-way line of Rupp Avenue, a distance of 20.00 feet to an iron pin found;

Thence South 88°29′32″ West, along the North right-of-way line of Rupp Avenue, a distance of 848.64 feet to an iron pin set, said iron pin also being at the Southwest corner of a parcel of land now owned by Milark Industries, Inc., as recorded in Official Record Volume 306, Page 179 of the Richard County Deed Records;

Thence North 01°28′00″ West, along the East line of said Milark Industries, Inc., lands a distance of 418.98 feet to an iron pin set;

Thence North 88°29′32″ East, a distance of 938.94 feet to an iron pin set, said iron pin also being on the East line of the Northwest Quarter of Section No. 3;

Thence South 01°28′00″ East, along the East line of said Northwest Quarter, a distance of 399.10 feet to the true place of beginning, containing 9.029 acres, but subject to all legal highways and easements of record.

Issued in Romulus, Michigan, on August 13, 2008.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–21806 Filed 9–18–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Kern County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed Centennial Corridor highway project in Kern County, California.

FOR FURTHER INFORMATION CONTACT: Sarah Gassner, Senior Environmental Planner, Southern Sierra Environmental Analysis Branch, Caltrans, 2015 E. Shields Avenue, Suite 100, Fresno, California 93726 or call (559) 243–8243.

SUPPLEMENTARY INFORMATION:

Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency will prepare an EIS on a route adoption study to extend State Route 58 westerly to connect to Interstate 5, in Kern County, California. In addition, this EIS would provide environmental compliance documentation for construction of the project from State Route 58 to Heath Road. For purposes of the EIS, the project, known as the Centennial Corridor, is being evaluated in three segments. Two of the segments, from Interstate 5 to Heath Road and from Heath Road to Mohawk Street (Westside Parkway), have been the subject of previous NEPA documents. This EIS will incorporate by reference the previous documents: Final Route 58 Route Adoption Project, A Tier 1 Environmental Impact Statement/ Environmental Impact Report (Tier 1 EIS/EIR) (2002) and the Westside Parkway Environmental Assessment/ Final Environmental Impact Report (EA/ FEIR) (2006). This EIS will serve as a revalidation of the previous analysis.

The final segment of the Centennial Corridor, from Mohawk Street to State Route 58, will be evaluated at a construction level of analysis and will address multiple alternatives. Alternative alignments currently being evaluated include options west of State Route 99, east of State Route 99, and parallel to State Route 99, as well as a ''No Build'' alternative, a transit alternative, and a transportation systems management alternative. All of the build alternative alignments would connect State Route 58 to the east end of the Westside Parkway project. Caltrans will continue to screen the alternatives identified through the scoping process and only carry forward those alternatives that are considered viable for evaluation in the EIS. The following alternatives are currently under consideration: Alternative A proposes to construct a new freeway west of the State Route 58/99 interchange. The alignment would travel in a westerly direction for approximately one mile on the south side of Stockdale Highway, at which point it would turn in a northwesterly direction and span the Carrier Canal, Truxtun Avenue, and the Kern River. The proposed route would then connect to the Westside Parkway alignment between Mohawk Street and Coffee Road. The total length of the project from the existing State Route 99/ State Route 58 interchange to Interstate 5 utilizing Alternative A would be approximately 16.31 miles.

Alternative B proposes to construct a new freeway west of the State Route 58/ 99 interchange. The alignment would travel in a westerly direction for approximately one-half mile on the south side of Stockdale Highway, at which point it would turn to the northwest, span the Carrier Canal, Truxtun Avenue, and the Kern River. Alternative B would connect to the Westside Parkway alignment at the Mohawk Street interchange. The total length of the project from the existing State Route 99/State Route 58 interchange to Interstate 5 utilizing Alternative B is approximately 16.61 miles.

Alternative C proposes to connect existing State Route 58 to the Westside Parkway by means of routing new lanes adjacent and parallel to existing State Route 99. These additional lanes would run parallel to and independent of State Route 99. Movements between State Route 58, State Route 99 and the Westside Parkway would likely be facilitated by braided ramps and freeway-to-freeway connector ramps. The total length of the project from State Route 99 to Interstate 5 utilizing Alternative C is approximately 18.51 miles.

Alternative D proposes to construct a new freeway in the vicinity of Union Avenue (State Route 204). The roadway would extend north from State Route 58 for approximately one mile, where it would turn to the west and run parallel to the Burlington Northern Santa Fe railroad tracks. Alternative D would connect to the Westside Parkway alignment at the new interchange at Mohawk Street. The total length of the project from State Route 58 at Union Avenue to Interstate 5 is approximately 18.98 miles.

The ''No Build'' alternative, would not construct any improvements. State Route 58—East would continue to end at State Route 99 where it would jog to the north to tie into State Route 58—West (Rosedale Highway). The Westside Parkway would be constructed as a local facility, but would not connect to State Route 58, State Route 99, or Interstate 5.

Alternative M would evaluate Transit and Transportation Systems

Management (TSM) improvements. TSM focuses on low capital, environmentally-responsive improvements that maximize efficiency of existing facilities. An example of TSM improvements would be providing signal interconnects to facilitate the flow of traffic or providing bus turn-out bays to minimize the interruption of buses along a specific route. Specific transit and TSM measures have not been developed at this point. Preliminary traffic data is required to determine the most effective transit and TSM measures. Once the traffic data is available it would be determined if transit and TSM improvements would be separate alternatives or if it is more effective to evaluate a single alternative that includes both transit and TSM improvements.

It is anticipated that the proposed project may require the following federal permits and approvals: A Biological Opinion from the United States Fish & Wildlife Service, approval of a PM_{10}–$PM_{2.5}$ Hot Spot Analysis by the Inter-Agency Consultation Committee, an Air Quality Conformity determination from the Federal Highway Administration, Section 401, 402 and 404 permits under the Clean Water Act and a Farmland Conversion Impact Rating for Corridor Type Projects from the United States Soil Conservation Service. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, local and participating agencies. In addition, the following Native American groups have been notified: The Chumash Council of Bakersfield, Kawaiisu Tribe, Kawaiisu Tribe of the Tejon Indian Reservation, Kern Valley Indian Community, Kern Valley Paiute Council, Kawaiisu Band of Kern Valley Indians, Kudzubitcwanap Palap Tribe, Native American Heritage Council of Kern County, Santa Rosa Rancheria—Tachi Yokuts Tribe, Tubatalabals of Kern Valley, Tinoqui—Chalola Council of Kitanemuk and Yowlumne Tejon Indians, Tule River Indian Reservation and the White Blanket Paiute Rancheria. Private organizations and citizens who have previously expressed or are known to have interest in this proposal have also received notification on the project. The environmental scoping process began in March 2008. Public information meetings were held on March 4, 2008, May 22, 2008, July 21, 2008, and August 21, 2008, in Bakersfield, California. Several community focus meetings have been and are continuing to be held in neighborhoods affected by the proposed project alternatives.

A scoping meeting will be held on October 2, 2008. The meeting will be held for agencies from 1 p.m. to 3 p.m. at the Thomas Roads Improvement Program Offices located at 900 Truxtun Avenue, Suite 200, Bakersfield, California. The meeting for the public will be held from 4:30 p.m. to 7:30 p.m. at the Kern County Administrative Offices, in the Building Rotunda located at 1115 Truxtun Avenue, Bakersfield, California to provide additional opportunities for agency and public input on the proposed project. Public notice will be given of the time and place of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 11, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–21933 Filed 9–18–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 that are final within the meaning of 23 U.S.C. 139(l)(1). These actions relate to a proposed highway project, the State Route 84 (SR 84) Expressway Widening Project between approximately Jack London Boulevard and Ruby Hill Drive (Post Miles 22.5 to 27.3) in the County of Alameda, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 18, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Melanie Brent, Caltrans District 4 Office of Environmental Analysis, 111 Grand Avenue, P. O. Box 23660, Oakland, CA 94623–0660, during normal business hours from 8 a.m. to 5 p.m., Telephone (510) 286–5621, e-mail Melanie Brent/D04/Caltrans/CAGov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Caltrans, pursuant to its assigned responsibilities under 23 U.S.C. 327, and certain Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by approving the SR 84 Expressway Widening Project in the State of California. When completed, the project will widen SR 84 from two to four lanes between Ruby Hill Drive and Stanley Boulevard and two to six lanes between Stanley Boulevard and Jack London Boulevard in the City of Livermore, Alameda County, California. The purpose of the project is to improve SR 84 as a regional route, improve traffic circulation, upgrade SR 84 to an expressway facility, and improve bicycle and pedestrian access. The project length is 4.8 miles. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Initial Study with Negative Declaration/Environmental Assessment for the project, approved on August 5, 2008 and in the Finding of No Significant Impact (FONSI) issued on August 5, 2008, and in other documents in the project records. The Initial Study with Negative Declaration/Environmental Assessment, FONSI, and other project records are available by contacting Caltrans at the address provided above. The FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/envdocs.htm*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Shawn E. Oliver,

Team Leader, State Projects, Federal Highway Administration.

[FR Doc. E8–21729 Filed 9–18–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1–Motor vehicle, 2–Rail freight, 3–Cargo vessel, 4–Cargo aircraft only, 5–Passenger-carrying aircraft.

DATES: Comments must be received on or before October 20, 2008.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 10, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14751–N		ExxonMobil, Mont Belvieu, TX.	49 CFR 173.242	To authorize the transportation in commerce of an Organometallic substance, solid in a non-DOT specification portable tank. (modes 1, 2, 3).
14756–N		Univation Technologies, LLC, Houston, TX.	49 CFR 173.242	To authorize the transportation in commerce of a Division 4.2 hazardous material in a non-DOT specification portable tank. (modes 1, 3).
14762–N		PPG Industries, Inc, Pittsburgh, PA.	49 CFR 173.173, 173.242, 172.326 and 172.504.	To authorize the transportation in commerce of certain open-top cylindrical mixing tanks containing the residue of a Class 3 hazardous material by motor vehicle. (mode 1).
14763–N		Weatherford International, Fort Worth, TX.	49 CFR 173.302a and 173.301(t).	To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder similar to a DOT Specification 3A cylinder for transportation of hydrocarbon formation fluid sample from oil well sites. (modes 1, 2, 3, 4, 5).
14764–N		SAFC Hitech Inc. Milwaukee, WI.	49 CFR 703.301, 173.304 and 173.304a.	To authorize the filling, for export only, of non-DOT specification pressure vessels with boron trichloride, Division 2.3, Hazard Zone C. (modes 1, 2, 3).
14765–N		Chemtrade Logistics, Inc., Chicago, IL.	49 CFR 180.407	To authorize the transportation in commerce of certain DOT Specification MC 312 and DOT 412 cargo tanks containing sulfuric acid that have been tested using alternative methods. (mode 1).
14766–N		JL Shepherd & Associates, San Fernando, CA.	49 CFR 173.416	To authorize the continued transportation in commerce of certain DOT Specification 2OWC radioactive material packagings after October 1, 2008. (mode 1).
14767–N		Commodore Applied Technologies, Inc., Broomfield, CO.	49 CFR 173.420	To authorize the one-time transportation in commerce of uranium hexafluoride in a DOT Specification 4B240ET cylinder. (mode 1).

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14768–N		Tobin & Sons Moving and Storage, Inc., Peabody, MA.	49 CFR 173.196	To authorize the transportation of certain infectious substances by motor vehicle in alternative packaging (freezers). (mode 1).
14769–N		Pfizer, Inc., Memphis, TN	49 CFR 173.199	To authorize the one-way transportation in commerce of certain infectious substances in alternative packaging (freezers). (mode 1).
14770–N		Dow Chemical Company, Midland, MI.	49 CFR 173.242	To authorize the transportation in commerce of a Divison 4.3 organometallic substance in a non-DOT specification portable tank. (modes 1, 2, 3).

[FR Doc. E8–21640 Filed 9–18–08; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 11, 2008.

The Department of the Treasury is planning to submit following public information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by contacting the Treasury clearance officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 17, 2008 to be assured of consideration.

OMB Number: 1505–0195.

Type of Review: Extension.

Title: Race and National Origin Identification.

Description: This form will be used to collect applicant race and national origin information through the online application system. The data will be used to help Treasury Bureaus and Departmental Offices identify barriers to selection and determine the demographics of the overall applicant pool.

Respondents: Individuals.

Estimated Total Reporting Burden: 8,000 hours.

Clearance Officer: Joann Sokol, Human Resources, 202–622–0814, 1750 Pennsylvania Avenue, Washington, DC 20220.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–21905 Filed 9–18–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 3 additional individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the three individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 12, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 12, 2008, OFAC designated three additional individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

1. Carvajal Barrios, Hugo Armando, Venezuela; DOB 01 Apr 1960; POB La Cruz, Venezuela; Director, Venezuelan Military Intelligence Directorate (''DGIM''); (INDIVIDUAL) [SDNTK].

2. Rangel Silva, Henry de Jesus, Caracas, Venezuela; Cedula No. 5.764.952 (Venezuela); Cedula No. V–5.764.952 (Venezuela); Director, Venezuelan Directorate of Intelligence and Prevention Services (''DISIP''); (INDIVIDUAL) [SDNTK].

3. Rodriguez Chacin, Ramon Emilio, Venezuela; Cedula No. 3169119

(Venezuela); Former Minister of Interior and Justice of Venezuela; (INDIVIDUAL) [SDNTK].

Dated: September 12, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–21961 Filed 9–18–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0630]

Proposed Information Collection (Regulation on Application for Fisher Houses and Other Temporary Lodging and VHA Fisher House Application); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for temporary lodging while undergoing extensive treatment or procedures.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–0630'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation on Application for Fisher Houses and Other Temporary Lodging and VHA Fisher House Application, VA Form 10–0408.

OMB Control Number: 2900–0630.

Type of Review: Extension of a currently approved collection.

Abstract: VA provides temporary lodging to veterans receiving VA medical care or Compensation and Pension examinations and to family members or other persons accompanying the veteran. Application for temporary lodging may be by letter, telephone, e-mail, facsimile or in person at the VA healthcare facility of jurisdiction. VA Forms 10–0408 and 10–0408a can be used to collect data during the application process to determine the claimant's eligibility for temporary lodging. Temporary lodging services are provided on a first come, first served basis.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 83,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Semi-annually.

Estimated Number of Respondents: 250,000.

Estimated Total Annual Responses: 500,000.

Dated: September 11, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–21928 Filed 9–18–08; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Friday,

September 19, 2008

Part II

Department of Energy

10 CFR Part 900

Coordination of Federal Authorizations for Electric Transmission Facilities; Interim Final Rule and Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901–AB18

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Interim final rule and request for comment.

SUMMARY: Pursuant to section 216(h) of the Federal Power Act, the Department of Energy (DOE) is establishing procedures under which entities may request that DOE coordinate Federal authorizations for the siting of interstate electric transmission facilities. In today's **Federal Register**, DOE proposes several additional provisions that may be added to this part after consideration of public comments.

DATES: *Effective Date:* This interim final rule is effective October 20, 2008. *Comment Date:* Written comments must be received by October 20, 2008.

ADDRESSES: You may submit written comments, identified by RIN 1901–AB18, by any of the following methods:

1. *E-mail to SEC216h@hq.doe.gov.* Include RIN 1901–AB18 and ''Interim Final Rule Comments'' in the subject line of the e-mail. Please include the full body of your comments in the text of the message or an attachment.

2. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

3. *Mail:* Address the comments to Mr. John Schnagl, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Due to potential delays in the Department's receipt and processing of mail sent through the U.S. Postal Service, we encourage commenters to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. John Schnagl, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585; Phone (202) 586–1056; e-mail *John.Schnagl@hq.doe.gov* or Lot Cooke, Attorney Advisor, U.S. Department of Energy, Office of the General Counsel (GC–76), 1000 Independence Avenue, SW., Washington, DC 20585; Phone (202) 586–0503; e-mail *Lot.Cooke@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Interim Final Rule
III. Interim Final Rulemaking
IV. Regulatory Review
V. Approval of the Office of Secretary

I. Background

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) added a new section 216 to the Federal Power Act (FPA) (16 U.S.C. 791–828c) which deals with the siting of interstate electric transmission facilities. Section 216(h) of the FPA, as amended (16 U.S.C. 824p(h)), which is titled ''Coordination of Federal Authorizations for Transmission Facilities,'' provides for DOE to be the lead agency for purposes of coordinating all applicable Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews. This interim final rule establishes the procedures DOE will use in carrying out its responsibilities under section 216(h). In a notice of proposed rulemaking published in today's **Federal Register**, DOE proposes rule provisions for public comment that address: (1) The establishment of prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, proposed electric transmission facilities under section 216(h)(4)(A) of the FPA; (2) the Secretary of Energy's determination under section 216(h)(4)(B) that all necessary data has been submitted by an applicant, after which all permit decisions and related environmental reviews under Federal laws must be completed within one year, or as soon thereafter as practicable in compliance with Federal law; and (3) the requirement that DOE be informed by the permitting entities of authorization requests required under Federal law in order to site significant facilities used for the transmission of electricity in interstate commerce for the sale of electric energy at wholesale.

Section 216(h) of the FPA provides an entity seeking permits, special use authorizations, certifications, opinions, or other approvals required under Federal law in order to site an electric transmission facility with a coordinated Federal consideration process and, thus, avoid duplicative separate review processes by various Federal entities. In addition to providing for the coordination of Federal transmission siting determinations, section 216(h) also provides that, to the maximum extent practicable under applicable Federal law, Indian tribes, multistate entities, and State agencies that have their own separate permitting and environmental reviews can participate in the Federal coordination process if they so choose.

To facilitate the coordination of the Federal review process provided for in section 216(h) of the FPA, on August 8, 2006, various Federal agencies with permitting or other Federal authorization responsibility for the siting of electric transmission facilities entered into a Memorandum of Understanding on Early Coordination of Federal Authorization and Related Environmental Reviews Required in Order to Site Electric Transmission Facilities (MOU). The signatories to the MOU are DOE, the Departments of Defense, Agriculture, the Interior, and Commerce, the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency, the Counsel on Environmental Quality (CEQ), and the Advisory Council on Historic Preservation.[1] The MOU and these regulations, as explained herein, are the principal instruments DOE will employ for Federal intergovernmental coordination of electric transmission facilities permitting requests under section 216(h) of the FPA.

II. Discussion of Interim Final Rule

A. General

In deciding how to proceed procedurally in implementing its authority under section 216(h), DOE reached certain conclusions based on its understanding of the purpose of the statute. First, under FPA section 216(h), DOE is to ''act as the lead agency for purposes of *coordinating* all applicable Federal authorizations and related environmental reviews'' (emphasis added). DOE interprets the term ''lead agency'' as used in FPA section 216(h) as making the Department responsible for being the lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under the National Environmental Policy Act (NEPA). In instances that the Department has a permitting role in siting an electric transmission facility, DOE may be the lead agency for preparing the environmental review document, but in general DOE and the permitting entities responsible for issuing Federal authorizations will jointly determine the appropriate permitting entity to be the lead agency for preparing NEPA compliance documents in accordance with existing CEQ regulations (40 CFR 1501.5).

Second, it is DOE's view that section 216(h) is intended to give an applicant seeking more than one Federal

[1] The MOU is posted at *http://www.oe.energy.gov/668.htm*.

authorization for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in a coordinated manner. With this in mind, DOE has determined that its coordination of Federal authorizations would be most beneficial as a request driven process. We do not believe Congress intended to impose DOE coordination on applicants who are satisfied with existing processes for obtaining the necessary Federal authorizations. If an applicant for Federal authorizations is familiar with existing Federal processes and is comfortable in proceeding under them, a requirement of DOE coordination is not only unnecessary, it would involve additional steps that could make the Federal review process more, rather than less, cumbersome and time-consuming. By establishing a request driven process, DOE provides coordination only in circumstances where the applicant for Federal authorizations determines that it will be beneficial for DOE to perform that role. In addition, DOE expects that permitting entities will coordinate applicable Federal authorizations and related environmental reviews even in instances where no coordination request has been received by DOE, and, as provided in section 216(h)(2) of the FPA DOE will be prepared to intercede if it determines that such coordination is not taking place.

B. Rule Provisions

Section 900.1 states the purpose of these regulations, which is to provide a process for the timely coordination of Federal authorizations for proposed transmission facilities pursuant to FPA section 216(h).

Section 900.2 of the interim final rule (''Applicability'') pertains to when DOE will consider a request for coordination of Federal authorizations. It provides that requests for coordination of Federal authorizations will be accepted by DOE only for facilities that are used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale. This limitation of the applicability of the regulations is consistent with the intent of section 216 of the FPA, which is titled ''Siting of Interstate Electric Transmission Facilities,'' and adheres to the definition of transmission facilities used by FERC in Order No. 689 (regulations regarding application for permits to site electric transmission facilities issued under section 216 of the FPA).[2]

Further, requests for coordination of Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection will not be accepted because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)).

Finally, section 900.2 provides that DOE will not accept requests for coordination of Federal authorizations from requesters that have submitted an application to FERC for issuance of a permit for construction or modification of a transmission facility, or have initiated pre-filing procedures, under section 216(b) of the FPA (16 U.S.C. 824p(b)). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC[3] and, in Order No. 689, FERC adopted regulations setting forth the procedures it will follow in such circumstances.

Section 900.3 provides definitions applicable to these regulations.

Section 900.4, which is titled ''Pre-application mechanism,'' implements section 216(h)(4)(C) of the FPA. That section directs DOE to provide ''an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each agency determine and communicate to the prospective applicant not later than 60 days after the prospective applicant submits a request for such information concerning—(i) the likelihood of approval for a potential facility, and (ii) key issues of concern to the agencies and public'' (16 U.S.C. 824p(h)(4)(C)). The procedures in section 900.4 complement those set forth in section III (B) of the MOU. The Department expects that the permitting agencies will supply information under section 216(h)(4)(C) in a manner consistent with existing laws. DOE views the section 900.4 pre-application mechanism as a discrete process, distinct from the process under section 900.5 of the interim final rule, or any other agency's pre-application process, and which provides details on the manner in which an applicant for a Federal authorization for an electric transmission facility can request DOE coordination of the Federal review process.

Once a request for coordination under section 900.5 of the interim final rule has been received by DOE, DOE will contact the permitting entities (defined in section 900.3 of the interim final rule as ''any Federal or non-Federal entity that is responsible for issuing separate Federal authorizations for a transmission facility'') in order to coordinate their applicable Federal authorizations and environmental reviews relating to the proposed transmission facility. In addition, DOE will contact all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews that have been identified by the requester under section 900.5(b)(4) of the interim final rule, to provide them the opportunity to participate in the coordination effort. For purposes of this rule, the term Indian tribes has the same meaning as provided in 25 U.S.C. 450b(e). Pursuant to the terms of the MOU, DOE will request permitting entities to provide DOE with the names, titles, telephone numbers, e-mail addresses, and other pertinent contact information for agency personnel who will be responsible for considering and issuing the Federal authorizations being sought by the requester from the permitting entities.

DOE and the permitting entities responsible for issuing Federal authorizations will, consistent with CEQ regulations, jointly determine the appropriate permitting entity to be the lead agency for preparing NEPA compliance documents and all other analyses required to comply with all environmental and cultural statutes and regulations under Federal law. Where relevant, and in accordance with the MOU, the U.S. Army Corps of Engineers shall be considered a participating agency. Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews may elect to participate in this coordination process.

DOE shall establish and maintain, to the extent practicable and in compliance with Federal law, a single location to store and display the information utilized by the permitting entities as the basis for their decisions on the proposed project under Federal law, including all environmental, cultural and historic preservation statutes and regulations. FERC's eLibrary is an example of such a source. This information shall be available to the applicant, all permitting entities, DOE, and all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews. This information shall comprise a single environmental review document to be used as the basis for all Federal

[2] Establishing Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69440 (December 1, 2006), FERC Stats. & Regs. ¶ 31,234.

[3] Department of Energy Delegation Order No. 00–004–00A, section 1.22, issued May 16, 2006.

authorizations pertaining to the proposed transmission facility.

In coordinating the preparation of a single environmental review document, DOE will rely upon the permitting entities, as appropriate, to ensure compliance with all applicable requirements of Federal law. The single environmental review document shall be available to all permitting entities for issuing their individual decisions in order to ensure that each permitting entity's environmental review is in compliance with the statutory mandates and regulatory requirements applicable to action by that permitting entity.

Pursuant to section 216(h)(8)(A)(i) of the FPA (16 U.S.C. 824p(h)(8)(A)(i)), based on information filed by the requester under this part, DOE will make a determination on the length of the anticipated use of the proposed electric transmission facility and advise all permitting entities of that determination prior to the close of the public comment period for the draft of the NEPA compliance documents.

III. Interim Final Rulemaking

This rule establishes procedures for the coordination of Federal authorizations for the siting of interstate electric transmission facilities. The Administrative Procedure Act exempts rules of agency procedure from its provisions requiring notice and opportunity for comment before issuance of rules (5 U.S.C. 553(b)(A)). DOE, however, is publishing an interim rule that provides a public comment opportunity.

IV. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these regulations falls into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule establishes procedures for DOE coordination of Federal authorizations for the siting of interstate electric transmission facilities and, therefore, a general notice of proposed rulemaking is not required. Accordingly, the Regulatory Flexibility Act requirements do not apply.

D. Review Under the Paperwork Reduction Act

This rulemaking would impose no new information or recordkeeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

E. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, tribal or local governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the interim final rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private sector, so these requirements do not apply.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this interim final rule and has determined that it would not preempt State law and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. No further action is required by the executive order.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any rule

that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the interim final rule published today does not have a significant adverse effect on the supply, distribution, or use of energy and, thus, the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's interim final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on September 12, 2008.

Kevin M. Kolevar,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

■ For the reasons set forth in the preamble, the Department of Energy amends chapter II of title 10 of the Code of Federal Regulations by adding a new part 900 as set forth below.

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.

900.1 Purpose.
900.2 Applicability.
900.3 Definitions.
900.4 Pre-application mechanism.
900.5 Request for coordination.
900.6 Coordination of permitting and related environmental reviews.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose.

This part provides a process for the timely coordination of Federal authorizations for proposed transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA). The regulations provide for the compilation of a single environmental review document in order to coordinate all permitting and environmental reviews required to be issued under Federal law. They also provide an opportunity for non-Federal entities to coordinate their own separate non-Federal permitting and environmental reviews with that of the permitting entities.

§ 900.2 Applicability.

(a) DOE accepts requests for coordination of Federal authorizations under this part only for facilities that are used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale.

(b) DOE does not accept requests for coordination under this part of Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas interconnection.

(c) DOE does not accept requests for coordination under this part from persons that have submitted an application to the Federal Energy Regulatory Commission (FERC) for issuance of a permit for construction or modification of a transmission facility under 18 CFR 50.6 or have initiated pre-filing procedures under 18 CFR 50.5.

(d) DOE, in exercising its responsibilities under this part, will consult regularly with FERC, electric reliability organizations, and transmission organizations approved by FERC.

§ 900.3 Definitions.

As used in this part:

Applicant means a person or entity who is seeking a Federal authorization.

Director means the Director of Permitting and Siting in the Office of Electricity Delivery and Energy Reliability within DOE.

DOE means the U.S. Department of Energy.

Federal authorization means any authorization required under Federal law to site a transmission facility, including permits, special use authorizations, certifications, opinions, or other approvals. This term includes authorizations issued by Federal and non-Federal entities that are responsible for issuing authorizations under Federal law for a transmission facility.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act (16 U.S.C. 791–828c).

Indian tribe has the same meaning as provided in 25 U.S.C. 450b(e).

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Non-federal entity means Indian tribes, multistate entities, and State agencies.

Permitting entity means any Federal or non-Federal entity that is responsible for issuing Federal authorizations.

Request for coordination means a request to DOE for coordination of Federal authorizations under this part.

Requester means an applicant that is seeking DOE coordination of Federal authorizations under this part.

Single Environmental Review Document means the total material that the permitting entities develop—with the lead agency for preparing the NEPA document being primarily responsible—and that DOE shall assemble, along with any other material considered necessary and made available by DOE, in order to fulfill Federal obligations for preparing NEPA compliance documents and all other analyses required to comply with all environmental, cultural and historic preservation statutes and regulations under Federal law. This information shall be available to the applicant, all permitting entities, DOE, and all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews.

§ 900.4 Pre-Application mechanism.

(a) An applicant, or prospective applicant, for a Federal authorization seeking information from a permitting

entity pursuant to 16 U.S.C. 824p(h)(4)(C) must request information pursuant to the terms specified in this section with a permitting entity, and notify the Director of the request to the permitting entity.

(b) Any request for information filed under this section shall specify in sufficient detail the information sought from the permitting entity and shall contain sufficient information for the permitting entity to provide the requested information pursuant to 16 U.S.C. 824p(h)(4)(C).

(c) Within 60 days of receipt of such a request for information, a permitting entity shall provide, to the extent permissible under existing law, information concerning the request to the applicant, or prospective applicant, and the Director.

§ 900.5 Request for coordination.

(a) A requester shall file a request for coordination with the Director.

(b) The request shall contain:

(1) The exact legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the State laws under which the requester is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(2) A concise general description of the proposed transmission facility sufficient to explain its scope and purpose, including:

(i) The voltage and type of current (alternating or direct);

(ii) The length of the transmission line;

(iii) The design and height of the support structures;

(iv) The proposed route (including the beginning and ending nodes of the transmission project, and a brief geographical description of the proposed route);

(v) A map of the proposed route (if available);

(vi) Any ancillary facilities associated with the proposed route;

(vii) The proposed dates for the beginning and completion of construction and the commencement of service;

(viii) Whether the applicant for a Federal authorization of the proposed transmission facility has submitted an interconnection request with a transmission organization or electric reliability organization approved by FERC; and

(ix) The anticipated length of time the proposed transmission facility will be in service;

(3) A list of all permitting entities from which Federal authorizations pertaining to the proposed transmission facility are needed, including the docket numbers of pending applications with permitting entities;

(4) A list of non-Federal entities that have their own separate non-Federal permitting and environmental reviews pertaining to the proposed transmission facility, including the docket numbers of relevant applications;

(5) A signed statement to the Director that the requester has served a copy of the request for coordination to all permitting entities, and all non-Federal entities that have their own separate non-Federal permitting and environmental reviews; and

(6) A statement by the requester certifying that it has informed the non-Federal entities that have their own separate non-Federal permitting and environmental reviews pertaining to the proposed transmission facility that they may coordinate their permitting and environmental reviews with DOE and the permitting entities pursuant to section 16 U.S.C. 824p(h)(4)(A). The statement should list the specific persons served and other pertinent contact information at all permitting entities and all non-Federal entities.

(c) The written request for coordination may be filed by mail or hand delivery with the Director at 1000 Independence Avenue, SW., Washington, DC 20585, or electronically in MS Word or PDF formats at *SEC216h@hq.doe.gov.* Electronic filing is DOE's preferred method. If filing by hand or mail, DOE requests that an electronic copy be filed as well.

(d) Upon receipt, DOE will post and make publicly available at *http://www.oe.energy.gov/fed_transmission.htm* each request for coordination and any subsequent correspondence and material filed with DOE in connection with the request, except for information exempt from disclosure under the Freedom of Information Act.

§ 900.6 Coordination of permitting and related environmental reviews.

(a)(1) Upon receipt of a request for coordination, DOE, as the coordinator of all applicable Federal authorizations and related environmental reviews, and the permitting entities shall jointly determine the appropriate level of coordination required, and, where applicable, the appropriate permitting entity to be the lead agency for preparing NEPA compliance documents, including all documents required to support a final agency decision, and all other analyses used as the basis for all decisions on a proposed transmission facility under Federal law. Designation of the lead agency for preparing NEPA documents shall be in compliance with regulations issued by the Council on Environmental Quality at 40 CFR 1500 *et seq.*

(2) Non-Federal entities that have their own separate non-Federal permitting and environmental reviews may elect to participate in the coordination process under paragraph (a)(2) of this section.

(b)(1) DOE as the agency coordinating federal authorizations shall establish, maintain, and utilize, to the extent practicable and in compliance with Federal law, a single location to store and display (electronically if practicable) all of the information assembled in order to fulfill Federal obligations for preparing NEPA compliance documents and all other analyses required to comply with all environmental and cultural statutes and regulations under Federal law. This information shall be available to the applicant, all permitting entities, DOE, and all Indian tribes, multistate entities, and State agencies that have their own separate non-Federal permitting and environmental reviews.

(2) DOE shall establish and maintain, to the extent practicable and in compliance with Federal law, a single location to store and display the information utilized by the permitting entities as the basis for their decisions on the proposed project under Federal law, including all environmental, cultural protection and natural resource protection statutes and regulations.

(3) In coordinating the preparation of a single environmental review document, DOE will rely upon the permitting entities, as appropriate, to ensure compliance with all applicable requirements of Federal law.

(4) The single environmental review document shall be made available to all permitting entities for making their agency decisions in order to ensure that each permitting entity's environmental review is in compliance with the statutory mandates and regulatory requirements applicable to action by that permitting entity.

[FR Doc. E8–21866 Filed 9–18–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 900

RIN 1901–AB18

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: The Department of Energy (DOE) is proposing to amend an interim final rule published elsewhere in today's **Federal Register** that establishes procedures for DOE coordination of all applicable Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews pursuant to section 216(h) of the Federal Power Act (FPA). This proposed rule would clarify a provision in section 216(h) that provides that the Secretary of Energy shall ensure that once an application for coordination has been submitted with such data as the Secretary considers necessary, all Federal authorization decisions and related environmental reviews under Federal laws must be completed within one year, or as soon thereafter as practicable in compliance with Federal law. The proposed rule also would require permitting agencies to inform DOE of requests for authorizations required under Federal law for the siting of significant facilities used for the transmission of electricity in interstate commerce, and it provides that DOE, as authorized by section 216(h), may establish intermediate milestones and ultimate deadlines for the review of such Federal authorization applications and decisions.

DATES: Public comment on this proposed rule will be accepted until November 3, 2008. See section III of the **SUPPLEMENTARY INFORMATION** section of this notice for additional information about public comment procedures.

ADDRESSES: You may submit comments, identified by RIN 1901–AB18, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail to SEC216h@hq.doe.gov.* Include RIN 1901–AB18 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. *Mail:* Address written comments to Mr. John Schnagl, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability (OE–20), 1000 Independence Avenue, SW., Washington, DC 20585. Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. You may request copies of comments by contacting Mr. Schnagl.

FOR FURTHER INFORMATION CONTACT: Mr. John Schnagl, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone (202) 586–1056; e-mail *John.Schnagl@hq.doe.gov* or Lot Cooke, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–76, 1000 Independence Avenue, SW., Washington, DC 20585; Phone (202) 586–0503; e-mail *Lot.Cooke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Proposed Rule
III. Public Comment Procedures
IV. Regulatory Review
V. Approval of the Office of Secretary

I. Background

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) added a new section 216 to the Federal Power Act (FPA) (16 U.S.C. 791–828c) which deals with the siting of interstate electric transmission facilities. Section 216(h) of the FPA, as amended (16 U.S.C. 824p(h)), which is titled ''Coordination of Federal Authorizations for Transmission Facilities,'' provides for DOE to be the lead agency for purposes of coordinating all applicable Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews. DOE is proposing rule provisions for public comment under which it will establish intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, proposed electric transmission facilities under section 216(h)(4)(A) of the FPA. In addition, DOE is proposing provisions that would require permitting entities to inform DOE of authorization requests required under Federal law in order to site significant facilities used for the transmission of electricity in interstate commerce for the sale of electric energy at wholesale. In today's **Federal Register**, DOE publishes an interim final rule which establishes the procedures DOE will use in carrying out its responsibilities under section 216(h). Finally, DOE is proposing rule provisions that address the Secretary of Energy's determination under section 216(h)(4)(B) that all necessary data has been submitted by an applicant, after which all permit decisions and related environmental reviews under Federal laws must be completed within one year, or as soon thereafter as practicable in compliance with Federal law.

II. Discussion of Proposed Rule

In deciding how to proceed procedurally in implementing its authority under section 216(h), DOE reached certain conclusions based on its understanding of the purpose of the statute. First, under FPA section 216(h), DOE is to ''act as the lead agency for purposes of *coordinating* all applicable Federal authorizations and related environmental reviews'' (emphasis added). DOE interprets the term ''lead agency'' as used in FPA section 216(h) as making the Department responsible for coordinating environmental review efforts undertaken by other permitting entities, rather than being the Federal entity responsible for the preparation of the environmental review document under the National Environmental Policy Act (NEPA). In instances that the Department has a permitting role in siting an electric transmission facility, DOE may be the lead agency for preparing the environmental review document, but in general DOE and the permitting entities responsible for issuing Federal authorizations will jointly determine the appropriate permitting entity to be the lead agency for preparing NEPA compliance documents in accordance with existing CEQ regulations (40 CFR 1501.5).

Second, it is DOE's view that section 216(h) is intended to give an applicant seeking more than one Federal authorization for the construction or modification of electric transmission facilities access to a process under which all Federal reviews are made in a coordinated manner. With this in mind, DOE has determined that its coordination of Federal authorizations would be most beneficial as a request driven process. We do not believe Congress intended to impose DOE coordination on applicants who are satisfied with existing processes for obtaining the necessary Federal authorizations. If an applicant for Federal authorizations is familiar with existing Federal processes and is comfortable in proceeding under them, a requirement of DOE coordination is not only unnecessary, it would involve additional steps that could make the Federal review process more, rather than less, cumbersome and time-consuming. By establishing a request driven process, DOE provides coordination only in circumstances

where the applicant for Federal authorizations determines that it will be beneficial for DOE to perform that role.

However, DOE believes it is consistent with the intent of Congress in section 216(h) of the FPA that DOE be informed of authorization requests required under Federal law in order to site significant facilities used for the transmission of electricity in interstate commerce for the sale of electric energy at wholesale. This will allow DOE to be aware of Federal authorization requests for significant electric transmission facilities even in cases where no coordination request has been received by the DOE. Under proposed section 900.7, DOE would limit this notification requirement to Federal authorizations where the permitting entity has made a determination that an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) is necessary. In instances where Federal authorizations are subject to lesser environmental scrutiny under NEPA, such as a categorical exclusion (CX) or an environmental assessment (EA) which results in a finding of no significant impact, final agency determinations generally are made more quickly than for projects that require an EIS. Hence, DOE does not believe it is necessary to impose a notification requirement on permitting entities for Federal authorizations that are subject to a CX or an EA which results in a finding of no significant impact. Therefore, the proposed rule requires that all permitting entities inform DOE within five days of issuing a notice of intent to prepare an EIS on a Federal authorization for an interstate electric transmission facility.

In addition, DOE expects that permitting entities will coordinate applicable Federal authorizations and related environmental reviews even in instances where no coordination request has been received by DOE, and, as provided in section 216(h)(2) of the FPA, DOE will be prepared to intercede if it determines that such coordination is not taking place.

Section 216(h)(4)(A) of the FPA provides that DOE ''shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility.'' Proposed section 900.8 provides that in instances where DOE has received a request for coordination of the Federal authorization process, DOE, pursuant to section 216(h)(4)(A) and in consultation with the permitting entities, will establish, as appropriate, intermediate milestones and ultimate deadlines for the review of Federal authorization applications and decisions relating to the proposed facility when a permitting entity has issued a notice of intent to publish an EIS. No intermediate milestones and ultimate deadlines would be established for Federal authorizations that require a CX or an EA which results in a finding of no significant impact. Proposed section 900.8(b) provides that no later than 30 days prior to any prompt and binding intermediate or ultimate deadline established by DOE, any permitting entity subject to the deadline shall inform DOE if the deadline will not, or is not likely to, be met. Under proposed section 900.9(c), DOE, in consultation with the permitting entities, may extend an interim or ultimate deadline.

Further, section 216(h)(4)(B) of the FPA provides that the Secretary of Energy shall ensure that once an applicant has requested a Federal authorization with such data as the Secretary of Energy considers necessary, all permits decisions and related environmental reviews under Federal laws will be completed within one year or as soon thereafter as possible in compliance with Federal law. In order to ensure that statutory mandate is met for all Federal authorizations, both for authorization requests in which the applicant has requested DOE coordination of the authorization process and for authorization requests in which no such coordination request has been made, DOE is proposing that all Federal authorizations shall be completed no more than one year after: (1) A determination by the permitting entity has been made that the Federal authorization is subject to a CX; (2) an EA has been completed which resulted in a finding of no significant impact; or (3) 30 days after the close of the comment period on the permitting entity's draft EIS. If another provision of Federal law, or some other cause, does not permit a permitting entity to make a Federal authorization determination within the time limits set forth in (1), (2), or (3), the authorization shall be completed as soon thereafter as possible, as discussed in more detail below.

DOE believes that once a permitting entity has sufficient data to determine that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS, that it has such data as is necessary to complete its environmental review and issue a final decision on the Federal authorization request within one year. If a requirement of another provision of Federal law does not permit a final decision on the Federal authorization request within one year after the permitting entity has determined that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS, the permitting entity shall issue a final decision as soon thereafter as allowed by provision of law.

If a requirement of another provision of Federal law does not permit a final decision on the Federal authorization request within one year after the permitting entity has determined that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS, the permitting entity shall inform DOE and the applicant of that fact no later than 30 days after the permitting entity has determined that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS. The permitting entity shall cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year after the permitting entity has determined that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS, and the date by which the final decision on the authorization request can be issued in compliance with Federal law.

If for some reason other than a requirement of another provision of Federal law, a permitting entity does not believe it can issue a final decision on the Federal authorization request within one year after the permitting entity has determined that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS, the permitting entity shall inform DOE and the applicant of that fact no later than 30 days after the permitting entity has determined that a CX is applicable, or has completed an EA and made a finding of no significant impact, or 30 days after the close of the comment period on a draft EIS. In such a case, DOE may toll or extend the date by which the permitting entity shall issue a final decision on the Federal authorization request. An example of a basis to toll or extend the date by which the permitting entity shall issue a final decision on the Federal authorization request is that substantial additional environmental analysis is required prior to making a Federal authorization

decision. For instance, after a permitting entity has completed an EA it may make a finding of significant impact which requires an EIS, or upon receiving comments on a draft EIS a determination may be made that a supplemental EIS is needed. Under these circumstances, DOE may toll or extend the section 216(h)(4)(B) deadline.

In establishing the one year deadline, DOE believes that the permitting entity will have met its statutory mandate to complete all permit decisions and related environmental reviews upon the issuance of necessary permits and other documents, including where applicable a Record of Decision under NEPA, even if the effective date of the permit may be delayed due to rehearing or other appellate proceedings. In the event a Permitting Entity denies or fails to act on a Federal authorization by the deadline established by DOE pursuant to section 216(h)(4)(B) of the FPA, the applicant for a Federal authorization may appeal to the President pursuant to section 216(h)(6) of the FPA.

III. Public Comment Procedures

Interested persons are invited to participate in this proceeding by submitting data, views, or arguments. Written comments should be submitted to the address, and in the form, indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

DOE has determined that this rulemaking does not present a substantial issue of fact or law, or is likely to have the kinds of substantial impacts, that warrant an opportunity for oral presentation of views, data, and arguments pursuant to 42 U.S.C. 7191(b).

IV. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the National Environmental Policy Act

DOE has concluded that these proposed regulations fall into the class of actions that do not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that interprets or amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule addresses the timing of the Secretary of Energy's determination that all necessary data have been submitted by an applicant, which starts the one-year period during which all Federal authorizations and associated reviews must be completed. It also would incorporate the authority granted to DOE by section 216(h) of the FPA to establish intermediate milestones and ultimate deadlines for the review of Federal authorization requests. In addition, the proposed rule would require Federal permitting entities to inform DOE of authorization requests within five days of issuing a notice of intent to prepare an EIS. These provisions, if implemented, would not affect the substantive interests of any entities, including small entities. DOE expects that actions taken under these provisions to coordinate and speed the issuance of decisions on requests for Federal authorizations needed to site a facility used for the transmission of electricity in interstate commerce would be expected to lessen the burden on applicants. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This rulemaking would impose no new information or recordkeeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

E. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, tribal or local governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private

sector, and, thus, these requirements do not apply.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. No further action is required by the executive order.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a ''Family Policymaking Assessment'' for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, the DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today does not have a significant adverse effect on the supply, distribution, or use of energy and, thus, the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on September 12, 2008.

Kevin M. Kolevar,

Assistant Secretary, Office of Electricity Delivery and Reliability.

For the reasons set forth in the preamble, the Department of Energy proposes to amend part 900 of chapter II of title 10 of the Code of Federal Regulations.

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

1. The authority citation for part 900 continues to read as follows:

Authority: 16 U.S.C. 824p(h).

2. Add new §§ 900.7, 900.8 and 900.9 to part 900 to read as follows:

§ 900.7 Notification of requests for Federal authorizations.

A permitting entity which receives an authorization request required under Federal law in order to site a facility used for the transmission of electricity in interstate commerce for the sale of electric energy at wholesale must inform the Director within five days of issuing a notice of intent to prepare an environmental impact statement. The notification can be made to Mr. John Schnagl, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail *John.Schnagl@hq.doe.gov*.

§ 900.8 Prompt and binding intermediate milestones and ultimate deadlines.

(a) Upon receipt of a request for coordination, DOE, in consultation with the permitting entities, will establish, as appropriate, intermediate milestones and ultimate deadlines for the review of Federal authorization applications and decisions relating to a proposed electric transmission facility when a permitting entity has issued a notice of intent to prepare an environmental impact statement.

(b) No later than 30 days prior to any intermediate or ultimate deadline established by DOE under this part, the permitting entity subject to the deadline shall inform DOE if the deadline will not, or is not likely to, be met.

(c) DOE, in consultation with the permitting entities, may extend an interim or ultimate deadline.

§ 900.9 Deadlines for final decisions on Federal authorization requests.

(a) All Federal authorizations shall be completed one year after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact statement, or as soon thereafter as possible, as provided in paragraphs (b) and (c) of this section.

(b)(1) If a requirement in another provision of Federal law does not permit a final decision on the Federal authorization request within one year

after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact statement, the final decision will be issued as soon as allowed by provision of law.

(2) If a requirement of another provision of Federal law does not permit a final decision on the Federal authorization request within one year after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact statement, the permitting entity shall inform DOE and the applicant of that fact no later than 30 days after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact statement. The permitting entity shall cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact statement, and the date when the final decision on the authorization request can be issued in compliance with Federal law.

(c) If for some other reason than a requirement of another provision of Federal law, a permitting entity does not believe it can issue a final decision on the Federal authorization request within one year after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact assessment, the permitting entity shall inform DOE and the applicant of that fact no later than 30 days after the permitting entity has determined that a categorical exclusion is applicable, or has completed an environmental assessment and made a finding of no significant impact, or 30 days after the close of the comment period on a draft environmental impact statement. In such a case, DOE may toll or extend the date on which the permitting entity shall issue a final decision on the Federal authorization request.

[FR Doc. E8–21867 Filed 9–18–08; 8:45 am]

BILLING CODE 6450–01–P



Federal Register

Friday,

September 19, 2008

Part III

Postal Regulatory Commission

39 CFR Part 3060

Accounting and Periodic Reporting Rules; Proposed Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3060

[Docket No. RM2008–5; Order No. 106]

Accounting and Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.
ACTION: Proposed rule.

SUMMARY: The Commission is proposing rules affecting accounting practices, an assumed Federal income tax, and periodic reporting for the Postal Service's competitive products enterprise. The rules are intended to promote transparency and accountability without imposing undue burden on the Postal Service. Issuance of this proposal responds to a recent law that revised the Postal Service's business model and gave the Commission new oversight responsibilities. Comments will assist the Commission in developing final rules.

DATES: Initial comments due October 20, 2008; reply comments due November 3, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 6081 (February 1, 2008).

I. Introduction and Summary

The Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), requires the Commission to prescribe rules applicable to competitive products for the establishment and application of (a) the accounting practices and principles to be followed by the Postal Service, and (b) the substantive and procedural rules for determining the assumed Federal income tax on competitive products income. *See* 39 U.S.C. 2011(h)(2)(B). In addition, such rules shall provide for the submission by the Postal Service of annual and other periodic reports setting forth such information as the Commission may require. 39 U.S.C. 2011(h)(2)(B)(i)(III).

Aided by recommendations contained in a report submitted by the Secretary of the U.S. Department of Treasury (Treasury) pursuant to the PAEA, as well as comments on that report provided by interested persons, including the Postal Service, the Commission proposes rules for implementing section 2011(h)(2)(B). *See* sections II B and C, *infra*. By statute, such rules must be issued on or before December 19, 2008, unless the Commission and the Postal Service agree on a later date. *See* 39 U.S.C. 2011(h)(2)(B)(ii). Interested persons are invited to comment on the proposed rules. Comments are due no later than 30 days after publication in the **Federal Register**. Reply comments are due no later than 45 days after publication in the **Federal Register**.

Among the goals of the PAEA are the following: (1) Increase the transparency of Postal Service operations; (2) prohibit cross-subsidies of competitive products by market dominant products; and (3) reduce administrative burdens. In developing the proposed rules, the Commission has been guided by these goals. The proposed rules attempt to give effect to section 2011 in the context of the PAEA as a whole, while recognizing the realities and complexities of the Postal Service's operations and the legitimate expectations of stakeholders.

The assumed Federal income tax is, in reality, an intra-agency transfer designed, it would appear, to foster fair competition, a goal also served by the PAEA's pricing provisions applicable to competitive products. *See* 39 U.S.C. 3633(a)(1)–(3). Collectively, these pricing provisions also protect mailers of market dominant products by requiring that each competitive product cover its attributable costs, and that competitive products as a whole make a reasonable contribution to institutional costs. They further preserve fair competition in markets in which the Postal Service competes by prohibiting cross-subsidies by market dominant products of competitive products. The statute requires the annual ''payment'' of an assumed Federal income tax from the competitive products fund to the general postal fund and the proposed rules are designed to give effect to that requirement.

To that end, the proposed rules, which for the most part are in accord with Treasury's recommendations and draw from the Postal Service's suggestions, are based on a theoretical, on paper only enterprise, do not require new accounting or data collection systems, maintain the Commission's existing definition of attributable cost, and provide the Postal Service optional means for calculating an assumed Federal income tax on competitive products income. They are, in short, intended to promote the goals of transparency and accountability without imposing undue burdens on the Postal Service.

II. Legal Requirements Regarding the Accounting and Income Tax Rules for Competitive Products

Section 2011 sets forth financial provisions specific to competitive products, including creating a Competitive Products Fund and specifying the conditions under which it is to operate. In addition, section 2011 requires the Secretary of the Treasury to develop recommendations regarding accounting principles and tax rules applicable to competitive products. The Commission, upon receipt of those recommendations, must provide interested persons an opportunity to comment on the recommendations and thereafter must, by rule, provide for the establishment and application of accounting principles and tax rules to be followed by the Postal Service with respect to competitive products. Finally, section 2011 requires the Postal Service to file certain periodic reports with the Commission and Treasury. These various requirements are discussed below.

A. Competitive Products Fund

Section 2011 establishes the Competitive Products Fund (CPF) as a revolving fund in the Treasury of the United States. The CPF is generally available for receipt of revenues and payment of obligations associated with competitive products. Section 2011 also:

(1) Governs deposits of revenues and payment of costs (39 U.S.C. 2011(a)–(d)); [1]

(2) Authorizes and places limits on borrowings (*id.* 2011(e)(1)–(4)); [2]

(3) Requires payments on obligations (*id.* 2011(e)(5)); [3]

(4) Accords the CPF the same Federal budgetary treatment as the Postal Service Fund (*id.* 2011(f)); and

(5) Requires judgments arising out of the provision of competitive products to be paid from the CPF (*id.* 2011(g)).

[1] Costs include costs attributable to competitive products and all other costs incurred by the Postal Service to the extent allocable to competitive products. *Id.* 2011(a)(2).

[2] The Postal Service is authorized to borrow money and to issue such obligations as it deems necessary to provide for competitive products, including, for example, entering into agreements establishing reserve, sinking, and other funds, regarding the use of revenue and receipts of the CPF, and such other matters as the Postal Service considers necessary to enhance the marketability of such obligations. *Id.* 2011(e)(1)–(2); *see also* 2011(e)(3)–(4) for terms and conditions applicable for such obligations.

[3] Funds for payments on obligations are restricted to revenues, receipts, and assets of competitive products. The total assets are the greater of (1) assets related to the provision of competitive products; or (2) the percentage of total Postal Service revenues and receipts from competitive products times the total assets of the Postal Service. *Id.* 2011(e)(5).

B. Treasury Report Recommendations

On December 19, 2007, as required by 39 U.S.C. 2011(h)(1), the Secretary of the Treasury submitted a report to the Commission containing recommendations concerning accounting principles and practices that should be followed by the Postal Service for identifying and valuing assets and liabilities associated with providing competitive products, and the substantive and procedural rules for determining an assumed Federal income tax on competitive products income.[4] Treasury discusses specific PAEA accounting and Competitive Products Enterprise income tax requirements, ultimately recommending an accounting approach that it believes ''will best meet these requirements, including identifying and valuing the assets and liabilities for the CPF and determining the assumed federal income tax on the income of the CPF.'' *Id.* at 1. Treasury endorses the use of a simplified income tax calculation, while recognizing that the Commission will need to determine the optimum accounting approaches that the Postal Service should implement. *Id.* Treasury concludes its introductory comments to the report with the following cautionary observation:

> The accounting and income tax approaches described in this report should serve as the starting points for such future discussions and decisions. Given the size and scope of the [Postal Service's] operations as well as the complexity involved in meeting the PAEA accounting and other requirements, Treasury believes that any necessary changes to the existing [Postal Service] costing and other systems should be made incrementally and notes that some may need to be implemented over the long term.

Id. at 1–2.

As relates to its task of developing recommendations, Treasury identifies five PAEA requirements applicable to competitive products:

1. The prohibition against subsidies by market dominant products (sections 3633(a)(1) and 2011(h)(1)(A)(II));

2. The requirement that each competitive product cover its attributable costs (section 3633(a)(2));

3. The requirement that competitive products collectively cover what the Commission determines to be an appropriate share of the Postal Service's institutional costs (section 3633(a)(3));

4. The obligation to annually compute an assumed Federal income tax on competitive products income (section 3634(b)(1)); and

5. The requirement that total assets of the CPF shall be the greater of the assets related to the provision of competitive products calculated under section 2011(h) or the percentage of total Postal Service revenues and receipts from competitive products times the Postal Service's total assets (section 2011(e)(5)).

Id. at 31.

In developing its recommendations, Treasury discusses the Postal Service's current costing system, the cost accounting requirements for competitive products under the PAEA, and difficulties in calculating an assumed Federal income tax on competitive products income. In the end, based on its review of various legal, policy, and practical factors, Treasury offers nine specific recommendations as follows:

1. Modify the current cost attribution system to reflect competitive products as determined by the Commission;

2. Create a theoretical, on paper only competitive enterprise, assigning to it an appropriate share of total Postal Service costs;

3. Use currently reported volume variable or marginal costs to ensure that competitive products cover their attributable costs, and use reported incremental costs to guard against cross-subsidization of competitive products by market dominant products;

4. Adjust competitive products contribution to institutional costs, if necessary, once Universal Service Obligation costs have been reliably established;

5. Modify the current cost accounting system to capture the causal relationship between market dominant and competitive lines of business and their applicable business costs, with remaining costs treated as institutional;

6. Use existing financial data systems as basis for reporting competitive products profits with adjustments, as necessary, to determine the assumed Federal income tax;

7. Develop a theoretical competitive products income statement;

8. Calculate an assumed income tax using a simplified approach, preferably using a published, regularly updated tax rate; and

9. Provide sufficient accounting and financial statements regarding the theoretical competitive products enterprise.

Id. at 32–33.

C. Docket No. PI2008–2

To fulfill its obligations under section 2011(h)(2)(A), the Commission initiated Docket No. PI2008–2 to provide interested persons, including the Postal Service, an opportunity to comment on Treasury's recommendations.[5] In addition, the Commission solicited parties' comments on specific questions related to the Treasury Report.

Comments were submitted by the Postal Service,[6] United Parcel Service (UPS),[7] Pitney Bowes, Inc. (Pitney Bowes),[8] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak),[9] Parcel Shippers Association (PSA),[10] and the Public Representative.[11] Reply comments were submitted by the Postal Service,[12] the Public Representative,[13] Parcel Shippers Association,[14] and Robert W. Mitchell.[15] The Commission appreciates the commenters' submissions. They have been helpful in developing the proposed rules.

The parties' specific comments are discussed below in connection with the proposed rules. In general, however, the comments are broadly consistent and supportive, in large part, of Treasury's recommendations.[16] While there are differences among the comments, there appears to be agreement that a theoretical, on paper only enterprise is the only viable construct; the current costing and financial reporting systems are suitable as a basis for competitive

[4] Report of the U.S. Department of the Treasury on Accounting Principles and Practices for the Operation of the United States Postal Service's Competitive Products Fund, December 19, 2007 (Treasury Report).

[5] PRC Order No. 56, Notice and Order Providing an Opportunity to Comment on Treasury Report, January 28, 2008 (Order No. 56).

[6] Initial Comments of the United States Postal Service in Response to Order No. 56 and the Treasury Report, April 1, 2008 (Postal Service Comments).

[7] Comments of United Parcel Service on the Treasury Report, April 1, 2008 (UPS Comments).

[8] Comments of Pitney Bowes Inc. in Response to Notice and Order Providing an Opportunity to Comment on Treasury Report, April 1, 2008 (Pitney Bowes Comments).

[9] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Report of the U.S. Department of the Treasury on Accounting Principles and Practices for the Operations of the United States Postal Service's Competitive Products Fund, April 1, 2008 (Valpak Comments).

[10] Comments of the Parcel Shippers Association on Treasury Report, April 1, 2008 (PSA Comments).

[11] Public Representative's Comments in Response to Commission Order No. 56, April 1, 2008 (Public Representative Comments).

[12] Reply Comments of the United States Postal Service in Response to Order No. 56 and the Treasury Report, May 1, 2008 (Postal Service Reply Comments).

[13] Public Representative Reply Comments in Response to Commission Order No. 56, May 1, 2008 (Public Representative Reply Comments).

[14] Reply Comments of the Parcel Shippers Association on Treasury Report, May 1, 2008 (PSA Reply Comments).

[15] Reply Comments of Robert W. Mitchell, May 2, 2008 (Mitchell Reply Comments).

[16] As the Postal Service notes, no commenter expresses any material disagreement with the recommendations. Postal Service Reply Comments at 1.

product reporting purposes; and a simplified income tax approach is appropriate.[17]

D. Periodic Reports

Section 2011(h)(2)(B)(i)(III) provides for the submission of annual and other periodic reports containing such information as the Commission may require. Pursuant to this provision and consistent with Treasury's recommendation (No. 9), the Commission proposes, as part of this rulemaking, that the Postal Service submit the following annual periodic reports: Income Report, Financial Status Report, Identified Property and Equipment Assets Report, and Pro Forma Balance Sheet.[18] Details of the proposed reports are discussed in section V below. If, in the future, it appears that additional financial reporting may be necessary to preserve an appropriate level of transparency and accountability, the Commission will consider requiring additional reports.

By statute, these reports are also to be filed with Treasury and the Postal Service Office of the Inspector General. 39 U.S.C. 2011(h)(2)(D). In addition, and as a separate matter, the Postal Service is obligated to submit a report to Treasury concerning operation of the Competitive Products Fund, which shall address, *inter alia,* reserve balances, allocation or distribution of money, and liquidity requirements. *Id.* 2011(i)(1). While a copy of this report is to be filed with the Commission, the detailed reporting requirements are matters to be addressed by the Postal Service and Treasury.

III. Accounting Practices and Principles

In developing its recommendations regarding the accounting practices and principles that should be followed by the Postal Service to identify and value assets and liabilities associated with providing competitive products, Treasury focuses on what it characterizes as the PAEA's cost accounting requirements, in particular, the requirements of section 3633(a). *See* Treasury Report at 3–10, which sets forth Treasury's recommendations 1 through 7. *See also id.* at 31.

The Commission's proposed rules regarding accounting practices and procedures associated with providing competitive products are similarly derived and focus on the costing methodology to be used by the Postal Service; methods for valuing assets and liabilities; and the financial reporting requirements for the competitive products enterprise. In this section, the Commission addresses the accounting principles embodied in the proposed rules and, as appropriate, Treasury's related recommendations and commenters' suggestions.

A. Competitive Products Fund

The PAEA requires a separate fund, the Competitive Products Fund, to be established for competitive products. The principal purpose of the Competitive Products Fund appears to be to ensure that expenses related to competitive products are not paid by market dominant products. The PAEA, which was implemented in December 2006, contemplates a two-year review period under section 2011 to implement the accounting practices and tax rules for determining the assumed Federal income tax on competitive products income. Although the proposed rules will not be effective prior to the end of FY 2008, the competitive products enterprise will, as proposed herein, be subject to the assumed income tax for that period. Given these timing differences, the Commission believes that, as a practical matter, the beginning balance of the Competitive Products Fund should reflect the contribution to institutional costs made by competitive products in FY 2007 that exceeded the 5.5 percent required by the rules. Based on the FY 2007 Annual Compliance Determination, that amount was $49 million.[19]

B. Theoretical Enterprise

The Commission agrees with Treasury's conclusion that the

> [o]nly viable method to begin to address the PAEA requirements for competitive products is to establish a theoretical, regulatory reporting construct under which the [Postal Service] would 'on paper only' analytically segregate and identify the revenue and costs associated with the competitive products—that is, to treat competitive products as if they were sold by a separate, theoretical enterprise or corporation that shares economies of scale and scope with the market-dominant products.

Treasury Report at 4.

The Commission accepts Treasury's recommendation (*id.* at 7) that a theoretical enterprise be analytically created by assigning it an appropriate share of all Postal Service costs. As Treasury points out and no commenter disputes, if this assumption is not made, then sophisticated cost modeling of a true stand-alone enterprise would be required, an undertaking that would be costly and necessitate numerous assumptions that would be difficult to validate. *Id.* at 6.

Adopting the virtual enterprise means that financial reporting related to competitive products will derive from the accounting and data collection systems used for all postal services. While refinements may be necessary to account for all activities related to competitive products, it would not be economical to require the Postal Service to construct entirely new systems solely for competitive products. Just as economies of scope can derive from shared equipment and facilities, so can economies of scope derive from shared accounting systems. As long as existing systems can be adjusted to generate complete and accurate information concerning competitive products, using existing systems is more economical.

C. Attributable Costs

Treasury states that ''[t]he volume-variable or marginal product costs reported by the [Postal Service] cost system should be used—after the product definition modification required by PAEA—to ensure that the competitive products cover their attributable costs.'' *Id.* at 7. This description of attributable costs differs from that traditionally used by the Commission which includes both product specific and volume variable costs. In reply comments, Mitchell proposes that the Commission remove product specific costs from attributable costs. He contends that these costs will be captured in incremental costs. He reserves the term ''attributable'' for volume variable costs alone. Mitchell Reply Comments at 9 and 10.

The Commission does not accept Treasury's or Mitchell's definition that equates volume variable costs with attributable costs because it is at odds with the Commission's long-held and judicially approved treatment of attributable costs.[20] The PAEA, which codifies the Commission's definition, defines ''cost attributable'' to mean ''the direct and indirect postal costs attributable to such product through reliably identified causal relationships.'' 39 U.S.C. 3631(b). The Commission

[17] *See, e.g.*, Valpak Comments at 3; Public Representative Comments at 4; and Pitney Bowes Comments at 3–4.

[18] The pro forma Balance Sheet is a hypothetical statement designed to provide information on the assets and liabilities of the hypothetical competitive products enterprise.

[19] *See* PRC Annual Compliance Determination, U.S. Postal Service Performance Fiscal Year 2007, March 27, 2008, Table IV–A–1 at 24. The $49 million is calculated as the total contribution to institutional costs of competitive products ($1,785.9 million) less 5.5 percent of the total institutional costs of the Postal Service of $31,577.12 million ($1,785.9 − ($31,577.2 *.055) = $49.1).

[20] *National Association of Greeting Card Publishers* v. *United States Postal Service*, 462 U.S. 810, 830 (1983).

attributes product-specific costs because a causal relationship can be established between these costs and the products they are associated with. Accordingly, the proposed rules are based on the Commission's long-held definition of attributable costs, which forms the basis for determining compliance with section 3633(a)(2), the requirement that each competitive product covers its attributable costs.

Valpak, Pitney Bowes, and UPS contend that improvements should be made to attributable cost measurement by the Postal Service to more accurately measure competitive products costs and to prevent cross-subsidization of competitive products by market dominant products. Valpak Comments at 4–6; UPS Comments at 2–3; and Pitney Bowes Comments at 2–4. The Commission agrees that the current costing system should be improved to the extent practicable to reflect new products, and used as the basis for the attribution of costs to competitive products.

Regarding data validity, Valpak states that the Commission may want to consider establishing minimal acceptable limits for reliability and require the Postal Service to meet those limits. While the Commission agrees with commenters that accurate cost data are essential, it refrains from prescribing specific data validation at this time. Should data quality issues arise the Commission may, at its discretion, or at the request of an interested party, initiate proceedings to address these issues. *See* 39 U.S.C. 2011(h)(2)(c)(ii).

D. Cost Nomenclature

Treasury describes what it terms ''line of business'' costs as those costs incurred by providing a particular type or line of business, *i.e.*, competitive products or market dominant products. Treasury Report at 9. The Postal Service equates these costs with group specific costs, which it defines as ''costs that are caused by the group of competitive products[.]'' Postal Service Comments at 12; *see also id.* at 30. Illustratively, it uses the example of a manager responsible for a particular business line, *i.e.*, competitive products. *Id.* at 31–32. This manager's salary and benefits plus those costs for any support staff would be included as ''line of business'' costs and be borne by competitive products as a group. The Postal Service describes the remaining costs as ''enterprise sustaining'' costs, *i.e.*, costs not associated with any individual line of business but generated in sustaining all lines of business. The Postmaster General's salary and benefits are an example of such costs. *Id.* at 29–37. The Commission concludes that ''line of business costs'' are the same as group specific costs and ''enterprise sustaining'' costs are the same as institutional costs.

E. Incremental Costs

Treasury defines incremental costs in the following manner:

> In a multi-product firm like [the Postal Service], incremental cost is the amount of cost avoided by eliminating a given product. The average incremental cost is this dollar figure divided by the number of units that are no longer produced. It is also possible to compute incremental cost by looking at the additional cost of adding a given number of units of a new product to the product line. However, the standard incremental cost calculation is based on the total cost that would be avoided if the current output of a product were reduced to zero and all associated costs with producing the product were eliminated.

Treasury Report at 39; *see also id.* at 3.

Section 3633(a)(1) prohibits cross-subsidies of competitive products by market dominant products. To test for cross-subsidies, Treasury recommends that competitive products reported incremental costs be used; *i.e.*, that such costs must be less than competitive products revenues. *Id.* at 32; *see also id.* at 7. Treasury's statements on this issue are somewhat ambiguous. On the one hand, it suggests that the incremental cost test should apply to each competitive product. *Id.* at 7. On the other hand, it states that ''reported incremental costs should be used to ensure that cross-subsidization of the competitive products by market-dominant products is not occurring.'' *Id.*

Five parties address the issue of the appropriate application of the incremental cost test. Valpak and UPS suggest the incremental cost test should be applied to both individual competitive products and the competitive products enterprise as a whole. Valpak Comments at 7; UPS Comments at 2. Alternatively, Mitchell recommends that the Postal Service develop an estimate of the incremental cost of competitive products as a group, including any product specific costs. Mitchell Reply Comments at 10.

The application of the incremental cost test is a settled issue. In Docket No. RM2007–1, the Commission interpreted section 3633(a)(1) to mean that incremental costs apply to competitive products as a group, not to individual competitive products. *See* 39 CFR 3015.7(b). The Postal Service and Pitney Bowes concur with this interpretation. Postal Service Comments at 35; Pitney Bowes Comments at 7. In Docket No. RM2008–4, the Commission proposes rules to require the Postal Service to file the relevant incremental cost data so that the incremental cost test can be applied.

F. Contribution to Institutional Costs

In addition to the incremental cost test, the PAEA requires that revenues from competitive products make an appropriate contribution to institutional costs, as determined by the Commission. 39 U.S.C. 3633(a)(3).[21] Treasury addresses this requirement in two respects. Following its discussion of group specific (or line of business) costs, Treasury recommends that the unassigned costs be treated as institutional costs and that an appropriate share of such costs should be covered by the theoretical competitive enterprise. Treasury Report at 6.

In addition, Treasury discusses the costs associated with the Postal Service's Universal Service Obligation (USO) and the degree to which such costs should be borne by competitive products. Among other things, Treasury comments that the USO may impose additional costs on the Postal Service that would not be incurred otherwise and that, as a general rule, USO costs are allocated solely to market dominant products. *Id.* at 7–8. Treasury further points out that economies of scope between competitive and market dominant products serve to reduce USO costs. *Id.* at 8.[22] It notes the pendency of the Commission's report on the USO and recommends that once the USO costs have been reliably determined, the Commission should adjust the allocation of institutional costs to competitive products as may be appropriate.[23]

Id. at 8.

[21] In Docket No. RM2007–1, the Commission set the appropriate share at 5.5 percent. PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant Competitive Products, October 29, 2007, at 90–92.

[22] Regarding the Commission's implementation of the PAEA, including sections 2011 and 3634, the Public Representative emphasizes that the continued existence of universal service is of paramount importance. Public Representative Comments at 3.

[23] In Order No. 56, the Commission asked whether its determination of an appropriate share of institutional costs under section 3633(a)(3) also satisfies, at least implicitly, the objective of section 3622(b)(9) (that institutional costs be allocated appropriately between market dominant and competitive products). PRC Order No. 56, Notice and Order Providing an Opportunity to Comment on Treasury Report, January 28, 2008, at 12. The two parties to address this question, the Postal Service and Valpak, equate the two provisions. Postal Service Comments at 37–38; Valpak Comments at 8.

Several parties comment on the appropriate allocation of institutional costs. PSA, which agrees with Treasury's recommendation regarding USO costs, also endorses Treasury's recommendation that unassigned costs be treated as institutional costs with an appropriate share allocated to competitive products. PSA Comments at 5. It suggests, however, that the Commission may wish to revisit that issue once various modifications required by the PAEA have been made to the Postal Service's costing systems. *Id.* at 5, 11.[24]

Pitney Bowes likewise endorses Treasury's recommendation to capture group specific (or incremental) costs that are incurred by market dominant or competitive products. Pitney Bowes Comments at 7. It suggests that modifications to the costing systems ''could result in noncompliance with the appropriate share requirement as currently established.'' *Id.* If that were to happen, it believes that the Commission should review the appropriateness of the 5.5 percent. *Id.* 7–8.

It is premature for the Commission to act on any of these suggestions. The Commission will, as appropriate, take its findings on the USO study into account with respect to its obligations under sections 3633(a)(3) and 3622(b)(9). *See* Valpak Comments at 5.

G. Valuation of Assets and Liabilities

1. Assets

Section 2011(h)(1)(A)(i)(I) requires Treasury to make recommendations regarding accounting practices that should be followed by the Postal Service in identifying and valuing the assets and liabilities associated with competitive products. Treasury observes that ''[e]fforts to analyze each [Postal Service] asset to determine its theoretical enterprise origin and usage could be a significant undertaking.'' Treasury Report at 26. It indicates, however, that the separation of assets could be achieved using cost drivers currently employed by the Postal Service to record depreciation and other expenses. *Id.* While not intended as exhaustive, Treasury discusses four potential methods for assigning assets to a theoretical competitive products enterprise. Two methods involve analyzing each individual asset and assigning it to competitive products based on an appropriate usage factor.[25] The other two methods use either a cost of revenue ratio, which distributes assets based on attributable costs, or a total revenue ratio, which distributes assets on the basis of total revenue. *Id.* at 26–27. While Treasury makes no specific recommendations, it notes that the simplicity of the latter two methods makes them an attractive option for the ''greater of'' test.[26]

In its initial comments, the Postal Service notes that ''there are few, if any, physical assets *strictly identifiable* with competitive products at this point in time.'' Postal Service Comments at 17 (emphasis in original). To address this problem, the Postal Service proposes to provide an Annual Identified Property and Equipment Report, which would provide a listing and valuation of assets uniquely associated with providing competitive products. This listing would be limited to ''*those cases where the Postal Service chooses to establish separate operational or administrative units devoted solely to competitive products.*'' *Id.* at 17–18 (emphasis in original).

The Commission concurs with Treasury that the cost of requiring the Postal Service to analyze each individual asset separately to determine its theoretical enterprise origin and usage would significantly outweigh any potential tax or other benefit. Such an assignment is not required under section 2011. The Commission agrees with Treasury that market dominant and competitive assets can be reasonably separated for purposes of section 2011 using cost drivers the Postal Service currently uses for reporting depreciation and other expenses. The Commission concludes that a simplified method similar to Treasury's suggested cost of revenue method will provide an appropriate comparison for the ''greater of'' test. This simplified method would not appear to be too burdensome or costly since it would basically follow the attribution of costs among products and thus would not require a significant asset analysis by the Postal Service to identify many of the asset accounts in the chart of accounts that would apply either partially or fully to the provision of competitive products. Moreover, as the Postal Service recognizes, a simplified approach is appropriate under section 2011. *Id.* at 41.

To assess the merits of the simplified method, the Commission, using the Postal Service's FY 2007 Annual Compliance Report (ACR) and the September FY 2007 National Consolidated Trial Balance, assigned over $2.1 billion of assets to the theoretical competitive products enterprise. The following is illustrative of the Commission's analysis.[27]

The Cost Segments and Components report provides depreciation costs for Mail Processing Equipment, Motor Vehicles, Buildings, and Leasehold Improvements attributed to the products. Major property assets can be assigned to the competitive products enterprise using the ratio of depreciation costs attributed to competitive products to total depreciation costs. Furthermore, under the reasonable assumption that revenues from the sales of particular products will generate either cash or a receivable account, which will eventually become cash, many of the current assets—such as the cash and cash equivalents and accounts receivables—could be allocated to competitive products using the ratio of competitive products revenues to total revenues. The assets for supplies, advances, and prepayments can be assigned using cost drivers derived from the expense accounts for those assets.

Additionally, there are several asset accounts described in the Postal Service's chart of accounts devoted exclusively to competitive products.[28] These assets would be wholly assigned to competitive products.

2. Liabilities

Treasury notes that many of the same assignment techniques used to allocate assets would also be applicable to liabilities. Treasury Report at 26. For example, the current liability accrued compensation and benefits could be partially assigned to competitive products using the ratio of competitive products labor costs to total attributable labor costs. A minimal amount of analysis of the liability accounts for payables and customer deposit accounts would be needed to determine the liability accounts that are specific to competitive products.[29] Some non-current liabilities could also be

[24] PSA also asserts (and the Commission agrees) that the assumed Federal income tax will have no effect on whether competitive products meet the requirements of section 3633(a)(3) since the tax applies only to amounts in excess of the required 5.5 percent share. PSA Reply Comments at 3, n.6.

[25] Both of these methods would necessitate establishing a set of accounting books to monitor and track assignment for ongoing maintenance, including asset additions and/or reductions, associated with competitive products. *Id.*

[26] *Id.* at 27 regarding section 2011(e)(5)(A) and (B).

[27] Worksheets supporting the allocation analysis are in Library Reference 1, Commission allocation of USPS Assets and Liabilities at tab ''assets''.

[28] For example, account 13264 is Foreign Country Receivable—International Express Mail and is used to record receivables from foreign countries for International Express Mail.

[29] One such account that would be specific to competitive products would be account number 25311.055, Expedited Mail Advance Deposit.

allocated to competitive products using the applicable attributable costs as a basis for the distribution key (*e.g.*, workers' compensation, repriced annual leave, and leasehold improvements depreciation costs).

Using the FY 2007 ACR and the FY 2007 National Consolidated Trial Balance, the Commission was able to estimate over $1.8 billion of liabilities for competitive products.[30]

While the proposed rules will require the production and filing of a balance sheet for competitive products, the methodology for assigning assets and liabilities is not specified therein. *See* proposed rules 3060.14 and 3060.30. The methods used to develop the Commission's estimates are illustrative. Nonetheless, these methods are reasonably related to relevant cost drivers. Any method employed by the Postal Service should be as well and must be based on the same costing methodology used to produce the report required by 39 CFR part 3050. Additionally, the proposed rules provide the Postal Service 12 months to develop an analysis of the asset and liability accounts in the general ledger to be able to formulate a logical and reasonably accurate assignment methodology.

IV. Calculation of an Assumed Federal Income Tax

The PAEA requires the Postal Service to calculate an assumed Federal income tax on competitive products income. Section 2011(h) provides minimal guidance as to how that assumed Federal income tax should be computed. It directs the Commission to ''provide for the establishment and application of the substantive and procedural rules'' to be followed in determining the annual assumed Federal income tax on competitive products within the meaning of section 3634. 39 U.S.C. 2011(h)(2)(B)(i)(II).

Section 3634 outlines the basis for calculating an assumed Federal income tax. First, it defines the term ''assumed Federal income tax on competitive products income'' to mean ''the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 (IRC) on the Postal Service's assumed taxable income from competitive products for the year[.]'' 39 U.S.C. 3634(a)(1). Second, it defines the term ''assumed taxable income from competitive products'' to mean:

> [t]he amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—
>
> (A) The only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and
>
> (B) The only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

Id. 3634(a)(2).

Finally, it requires the assumed tax be ''paid,'' *i.e.*, transferred from the Competitive Products Fund to the Postal Service Fund, on or before January 15 of the next subsequent year. *Id.* 3634(b)–(c).

What follows is a discussion of the concepts the Commission believes are pertinent to the establishment and application of the substantive and procedural rules that should govern the assumed Federal income tax for the theoretical competitive products enterprise.

A. Appropriate Methods of Calculating Tax

In section 2 of its report, Treasury discusses numerous considerations that influence the calculation of an assumed Federal income tax on competitive products income. Treasury Report at 11–23. It identifies two approaches, complex and simplified, that could be used for this purpose, but notes that they differ ''greatly in the cost, effort, and method of application.'' *Id.* at 24. Moreover, although it endorses a simplified approach, Treasury cautions that that approach, in particular, ''would require some level of PAEA intent interpretation and scope determination by the appropriate governance bodies.'' *Id.*

Treasury discusses three methods to arrive at a ''simple'' assumed tax rate. First, Treasury states that the Postal Service could use the effective C corporation tax rate (currently a maximum of 35 percent) and apply it to competitive products pretax income. Treasury states that this approach would put the Postal Service at a disadvantage because it is unlikely that any of its competitors would ever pay taxes based on that effective tax rate. Second, Treasury discusses that the Postal Service could select a set of competitive firms in the private sector that publish their effective tax rates, determine their weighted average tax rate, and pay that rate. Treasury points out that finding a sample of corporations that would be truly comparable to the Postal Service would be very problematic. Third, Treasury states that the Postal Service could use as an assumed set tax rate the Congressional Research Service's most currently reported average effective tax rate for C corporations (*e.g.*, 26.3 percent for 1993–2002). *Id.* at 21–23.

No commenter disagrees with Treasury's recommendation that a simplified approach may be used to calculate the assumed Federal income tax of the competitive products enterprise. *See* Postal Service Comments at 14; Public Representative Comments at 11; UPS Comments at 4; and PSA Reply Comments at 3.

The Commission agrees that a simplified approach may be used. That approach, however, must adhere to section 3634(a), which defines the assumed tax to be ''the net income that would be imposed by chapter 1 of the Internal Revenue Code of 1986[.]'' The simplified approach recommended by Treasury, which is based on a Congressional Research Service (CRS) composite figure, would not appear to satisfy the statutory definition.[31] The simplified approach proposed by the Commission applies the effective C corporation tax rate to the competitive products enterprise's pretax income. *See* proposed rule 3060.40. Treasury characterizes this approach as viable, but notes it ''puts the [competitive products] enterprise at an income disadvantage [because] * * * very few C corporations actually pay the effective tax rate.'' Treasury Report at 22. While it may be true that few C corporations actually pay the effective tax rate, the assumed Federal income tax ''paid'' by the theoretical competitive products enterprise is simply an intra-agency transfer from the Competitive Products Fund to the Postal Service Fund. Thus, any ''income disadvantage'' under this approach is more perceived than real.[32]

In lieu of simply applying the effective C corporations' tax rate to the theoretical competitive products enterprise pretax income, the Postal Service may elect, under the proposed rules, to avail itself of various deductions and/or credits under chapter 1 of the IRC. *See* proposed rule 3060.40. This option is available to the extent the Postal Service wishes to use it to reduce the competitive products enterprise assumed Federal income tax. However,

[30] Worksheets supporting the allocation analysis are in Library Reference 1, Commission allocation of USPS assets and Liabilities at tab ''liabilities.''

[31] Despite efforts, the Commission was unable to verify the CRS results or to determine how often they may be updated.

[32] Moreover, using either of the other simplified approaches suggested by Treasury would not be without tradeoffs. Using a composite effective tax rate, whether derived from competitors or the CRS, would likely require making adjustments for many tax treatments elected by private companies. For example, the Postal Service is not subject to foreign, state, or local taxes. Thus, using a composite effective tax rate could be viewed as giving the theoretical enterprise an ''income advantage.''

because the assumed tax is merely an intra-agency transfer, the Postal Service lacks the same incentives as private industry, to minimize its tax payment.

While the Commission is cognizant of concerns over imposing unnecessary burdens on the Postal Service, it does not believe that using either of these approaches to calculate the assumed Federal income tax would be too burdensome or costly. The complexity of computing the appropriate tax rate and income tax due for the theoretical competitive products enterprise under chapter 1 of the IRC is largely determined by the specific tax treatments the Postal Service chooses to apply. The Postal Service may make adjustments to competitive products taxable income and assumed taxes due by availing itself of certain deductions and/or credits available under chapter 1 of the IRC. Yet taking some of these available deductions and credits to reduce taxable income or taxes due is optional. The Postal Service may choose to take any or all appropriate deductions and/or credits under chapter 1 of the IRC; however, the costs of attempting to reduce the transfer payment must be weighed against the benefits. *See* PSA Reply Comments at 3, suggesting that any expenditure to reduce the assumed tax payment would represent a net loss to the Postal Service.

B. Specific Issues Concerning the Competitive Products Tax Liability

Treasury states, ''[t]ax law requires detailed accounting data for revenue and cost accruals/deferrals and asset-type specific depreciation methods in order to determine their applicability for tax treatment.'' Treasury Report at 27.

However, because the assumed Federal income tax is an intra-agency transfer and not an actual tax payment, certain simplifying assumptions and calculations can be made that will lessen the burden for the Postal Service while promoting fairness among the Postal Service and its competitors. Specific recommendations regarding tax issues are discussed below.

Timing of the competitive products enterprise taxes. The question of timing arises in two contexts. First, what ''year end'' should be applied each year for purposes of computing the assumed Federal income tax for competitive products and transferring that tax amount, if any, to the Postal Service Fund? Second, in what year should the first assumed Federal income tax be calculated for the competitive products enterprise.

Year end should be Postal Service fiscal year end September 30. Chapter 1 of the IRC allows a domestic C corporation to use any year end it chooses. 26 U.S.C. 441(b) and (e). Viewing the competitive products enterprise as akin to a domestic C corporation and given that the Postal Service's annual financial statements are provided on a September 30 fiscal year basis, the competitive products enterprise income tax return should be prepared on a September 30 year-end basis as well. Using this approach meets the requirement of the computation of an assumed Federal income tax under the PAEA while maximizing efficiency and minimizing costs for the Postal Service. No re-configuring of data related to non-conforming year ends is needed to compute the assumed Federal income tax. In addition, this approach is consistent with the statutory requirement that the transfer of the assumed Federal income tax, if any, from the Competitive Products Fund to the Postal Service Fund is due by January 15 following the close of the tax year (fiscal year end September 30). 39 U.S.C. 3634(c).

First fiscal year should be 2008. Section 3634 states that ''[t]he Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a) * * * compute its assumed Federal income tax on competitive products income for such year * * * 39 U.S.C. 3634(b). Section 3652 provides that the Postal Service must provide annual reports on costs, revenues, rates, and service to the Commission ''no later than 90 days after the end of each year[.]'' 39 U.S.C. 3652. The Postal Service voluntarily submitted its first annual report (for fiscal year 2007) under 39 U.S.C. 3652 on December 28, 2007. It follows that the first assumed Federal income tax computation must be made by the Postal Service for fiscal year ending September 30, 2008.

This would mean that according to 39 U.S.C. 3634(c), the transfer of the competitive products income tax due, if any, would have to be made by January 15, 2009. However, as explained above, the Commission expects final rules for the assumed Federal income tax computation to be completed no earlier than December 19, 2008. Therefore, a January 15, 2009 deadline does not appear to be reasonable. Hence, a one-time 6-month extension for computing and transferring the assumed Federal income tax will be allowed for the fiscal year ending September 30, 2008, which means that the computation and transfer must be completed by July 15, 2009. The computation and transfer for the assumed Federal income tax for fiscal year ending September 30, 2009 will be due on January 15, 2010.

Assuming that fiscal year 2008 is the first year of the tax computation for the theoretical competitive products enterprise and transfer payment to the Postal Service Fund, the issue arises as to whether income deferred from fiscal year 2007 relative to competitive products activities should be included in the theoretical competitive products enterprise taxable income. In order to match income and expenses for a given year, the Commission believes that the income deferred from fiscal year 2007 should not be included in the tax computation for fiscal year 2008. Therefore, the Commission recommends backing out of income for fiscal year 2007 deferrals related to competitive products.

A similar issue arises with regard to deferred gains on installment sales of real estate. The Commission believes that this income should not be included in the tax computation for the theoretical competitive products enterprise for fiscal year 2008. The Postal Service should also back out those amounts of taxable income related to competitive products for any taxable year that sales proceeds were collected.

No quarterly estimated taxes. A domestic corporation would normally be required to pay estimated taxes on its projected income four times a year. 26 U.S.C. 6655. The complexity of accurately estimating such quarterly estimated corporate tax payments involves considerable time, effort, and cost. From the Commission's point of view, the PAEA's explicit requirement of a January 15 transfer of the assumed Federal income tax from the Competitive Products Fund to the Postal Service Fund (without requiring any other payment or transfer in the statute) indicates that quarterly payments were not intended by the drafters of the legislation. Also, since 26 U.S.C. 6655 requires quarterly tax payments for corporations is not in chapter 1 but in chapter 68 of the IRC, and the PAEA requires computing the hypothetical competitive products income tax under chapter 1 of the IRC, estimated tax payments and their related computations are not actually required under the PAEA. Hence, no computation or payment of estimated taxes is required.

No state, local, and foreign taxes. It is apparent that under 39 U.S.C. 3634 only the computation and transfer of an assumed ''Federal'' income tax by the Postal Service is required. In fact, section 3634 is titled ''Assumed Federal income tax on competitive products income.'' The Postal Service will not be

required to make a transfer payment from the Competitive Products Fund to the Postal Service Fund for state, local, or any foreign taxes.[33] Consequently, no deduction or credit for any assumed foreign, state, or local tax will be available to the Postal Service.

Net operating losses. Chapter 1 of the IRC permits a Net Operating Loss (NOL) to be carried back two years and forward 20 years. 26 U.S.C. 172(b). A carryback of a competitive products NOL resulting in the refund of previously transferred tax remittances to the Postal Service Fund will be allowed and should not be viewed as a prohibited cross-subsidy by market dominant products of competitive products. It should instead be seen as the same type of tax treatment any Postal Service competitor would be permitted to claim under chapter 1 of the IRC.[34] 26 U.S.C. 172. In its comments, Valpak specifically supports the carryforward of a NOL for competitive products. It states, ''[t]o the extent that competitive products share in any reported loss by the Postal Service as a whole * * * no income tax should be payable, and losses reported for the Competitive Products Fund should have the same carry-forward privilege as in the private sector.'' Valpak Comments at 8. The Commission concludes that a two-year carryback and a 20-year carryforward of NOLs per chapter 1 of the IRC are permissible. It should be noted, however, that the two-year carryback is optional and may be waived by the Postal Service under 26 U.S.C. 172(b)(3).

Accrual method. The accrual method of tax accounting is the appropriate method to be used for the theoretical competitive products enterprise because of the level of gross receipts it generates and the activities it performs. Generally, the cash method of accounting for tax purposes is only available to entities that generate less than $5 million in gross revenue. 26 U.S.C. 448. Competitive products generated almost $8 billion in gross revenue in fiscal year 2007.[35] Using the accrual method will also conform to the Postal Service's current financial accounting method,[36] which would minimize any necessary changes to the existing cost systems.

Elections for competitive products. The Commission agrees with Treasury that certain first-year and other elections should be deemed to have been made for the theoretical competitive products enterprise including recurring item exception, rotable spare part treatment for supplies and repairs,[37] section 266 election for capitalizing interest expense related to construction, and the election to defer revenue from services to be performed the next year according to Revenue Procedure 2004–34. Treasury Report at 23.

Deductions available to competitive products. The Commission discusses below selected deductions that may be available to the Postal Service with regard to competitive products. Other deductions may also be available. Their omission from the following discussion does not preclude the Postal Service from adopting them if appropriate. The Postal Service may elect to forgo deductions and apply the applicable tax rate under the IRC to its net income instead.

Adjustments for depreciation of assets. The tax law pursuant to 26 U.S.C. 362 would normally require the basis of contributed assets to a business organization to be computed on a tax basis.[38] However, the re-computation of depreciation for Postal Service assets assigned to the competitive products enterprise could be extremely complex, costly, and burdensome. The Commission concludes that for simplicity purposes, the competitive products assets deemed to be transferred to the theoretical competitive products enterprise should be considered to be transferred at their book basis (original cost plus improvements net of financial/cost accounting depreciation). Therefore, the Commission recommends that for all assets placed into service prior to October 1, 2007, the historical basis, in conformance with the existing Postal Service cost accounting system, should be used. Future depreciation of those assets put into service prior to October 1, 2007, and any subsequent sales gain or loss computation of those assets should be at their historical cost and in conformance with the existing financial accounting depreciation basis. The allowable depreciation for these assets for tax purposes will be captured in the attributable costs of competitive products. For assets placed in service beginning on or after October 1, 2007, tax depreciation in accordance with the IRC may be used.

Leasehold improvements placed in service after December 31, 1986 by a lessee should be depreciable over the life of the real estate that they have improved which generally means either 31½ years or 39 years. When a lease terminates, whatever adjusted basis is remaining may be written off at that time. If the improvements were made before 1987, then the shorter of the lease term or the useful life of the property is the depreciation term. For simplicity purposes, the Commission believes that it would be appropriate for the financial statement amortization of leasehold improvements to be deductible for tax purposes as long as the assets were placed in service before October 1, 2007. Any leasehold improvements placed in service on or after October 1, 2007 should be depreciated according to the IRC.

For tax purposes, the theoretical competitive products enterprise should not be viewed as a government entity, but as a regular taxable corporate entity. Therefore, assets allocated to the theoretical competitive products enterprise should not be considered government property, which would normally be subject to section 168(g)'s slower and longer depreciation method.

Alternative minimum tax. Because the Alternative Minimum Tax (AMT) sections [39] are part of chapter 1 of the IRC, the AMT and the Adjusted Current Earnings (ACE) subsystem [40] must be considered as part of the computation of the assumed Federal income tax for the theoretical competitive products enterprise. Normally, depreciation would require a significant adjustment as the tax law generally allows a 200 percent declining balance, while the AMT rules only allow a 150 percent declining balance.[41] However, under 26 U.S.C. 55(e)(2)(A), only newly acquired assets will be subject to the AMT, and therefore, the AMT computations

[33] *See also Federal Trade Commission's Accounting for Laws that Apply Differently to the USPS and its Private Competitors*, December 2007, p. 26.

[34] The following example is illustrative of the possible use of NOLs for the theoretical competitive products enterprise tax liability computation: In fiscal year 2008 and 2009, the competitive products enterprise earned $150,000,000 in taxable income and transferred $40,000,000 in assumed Federal income tax from the Competitive Products Fund to the Postal Service Fund. Then in 2010 the competitive products enterprise registered a loss of $60,000,000. A $60,000,000 NOL carryover would be appropriate and should not be viewed as a cross-subsidy by market dominant products of competitive products, since the carryback would not exceed the total income reported. This would be the same tax treatment that would be available to any regular domestic corporation under section 172 of chapter 1 of the Internal Revenue Code. Only if losses exceeded the past or future income would a refund not be appropriate.

[35] It should be noted that while the activities performed by the theoretical competitive products enterprise are primarily services, they are not personal services as defined in Treasury Regulation 1.448–1T(e)(4) (law, accounting, health, engineering, architecture, actuarial, performing arts or consulting).

[36] United States Postal Service Annual Report 2007, Note 2, at 44.

[37] *See id.* at 44.

[38] The tax basis would be the original cost of the assets less the depreciation taken for tax purposes in previous years. Tax depreciation is normally greater than book depreciation.

[39] 26 U.S.C. 53–59.

[40] 26 U.S.C. 56(g).

[41] 26 U.S.C. 56(a)(1).

should be relatively simple. Further, if property is depreciated using the 26 U.S.C. 168(k) bonus depreciation (15-year life), no AMT adjustment is required for the depreciation component. The Postal Service should create a spreadsheet of the portion of assets allocated to the competitive products that were placed in service post September 30, 2007, and compute the difference between the regular tax and the AMT depreciation. However, no such AMT adjustment is required for real estate, intangibles, or leasehold improvements.

Capital and operating leases. The Postal Service should determine if its cost accounting systems have sufficient information available to distinguish capital leases from operating leases. In the case of operating leases, a deduction of rent expenses paid or accrued is allowed. In the case of capital leases, the lessor is the seller of the property on an installment basis. With regard to leases, the rules for tax purposes are slightly different than the rules for financial statement purposes. Chapter 1 of the IRC utilizes the guidelines in Revenue Ruling 55–540 for determining if a lease is an operating or capital lease.

The Commission recommends that given the number of leases the Postal Service has outstanding and the time it would take to analyze all those lease agreements that only the portion of leases related to competitive products and entered into post September 30, 2007 should be subject to potential adjustment for tax purposes.

Health benefits. Health benefit costs are incurred by the Postal Service for both current employees and retirees. For purposes of the theoretical competitive products enterprise, the Federal Employees' Health Benefit Plan, which covers substantially all Postal Service employees, is the equivalent of a qualified funded Welfare Benefit Program. Therefore, the Postal Service's annual portion of the allocated costs related to the theoretical competitive products enterprise for fiscal year 2008 and later years are deductible. Similarly, the Postal Service's annual portion of the allocated retiree health benefit costs related to competitive products for fiscal year 2008 and later years are deductible. These costs are already reflected in the attributable costs so no adjustments to book income are necessary.

Pension plan costs. Postal Service employees participate in one of three government retirement programs depending on their date of hire.[42] The IRC contains a large number of complex rules and requirements for qualified pension plans. Among them are participation requirements, limits on annual benefits, and non-discrimination rules to prevent terms which favor highly compensated employees. There are also rules covering minimum funding standards and ceilings on deductions for contributions to the pension and annuity plans. In some areas, different rules apply to single employer plans and multi-employer plans. In general, the minimum funding requirements must cover the liability for benefit accruals for the current year, as well as amortization of underfunded benefit accruals earned in prior years. The Commission concludes that the Postal Service's pension programs would qualify as the equivalent of qualified pension plans under 26 U.S.C. 401. Accordingly no adjustment to book income is required to determine taxable income.[43]

Workers' compensation costs. In Note 11 to its 2007 financial statements, the Postal Service states that it pays workers' compensation costs under a program administered by the Department of Labor.[44] This program is not a workers' compensation insurance program because the Postal Service pays the actual costs for postal workers injured on the job. The Postal Service estimates and records as a liability the estimated present value of the amount it expects to pay in the future for workers incurring job related injuries. Accordingly, the Postal Service self insures for workers' compensation and for accounting purposes accrues a liability and a related income statement expense.

For tax purposes, a deduction for self-insured workers' compensation is allowed in the year in which economic performance occurs. According to Treasury Regulation 1.461–4(g)(2), ''[i]f the liability of a taxpayer requires a payment or series of payments to another person and arises under any workers compensation act * * *, economic performance occurs as payment is made to the person to which the liability is owed.'' The regulation contains an example in which a company enters into a workers' compensation insurance contract with an unrelated insurance company but must pay the first $5,000 of any damages. The company is deemed to be self-insured with respect to the $5,000, and economic performance occurs when the $5,000 is paid to the person to whom the workers' compensation liability is owed. *Id.* Example 7.

In computing taxable income, workers compensation liabilities related to the theoretical competitive products enterprise arising in fiscal year 2008 and later are deductible when paid to the injured worker. The Postal Service also pays an administrative fee to the Office of Workers' Compensation Programs (OWCP) for processing workers' compensation claims. The fees for fiscal year 2008 and later years related to the theoretical competitive products enterprise should be deducted under normal accrual rules.

Available credits. The income tax law has various incentives that allow a dollar-for-dollar offset or credit against a taxpayer's tax liability. The purpose of many of these credits is to induce certain perceived economic or socially positive behaviors. The Commission believes that several of these credits may be available to the Postal Service to reduce the hypothetical tax liability of the theoretical competitive products enterprise under chapter 1 of the IRC. These credits include, but are not limited to, alternative fuel credit, targeted employee hiring credits, research and development credits, and rehabilitation credits. However, the Commission notes that applying any of the credits is elective. If the Postal Service finds that it would be too complex and cost prohibitive to compute any or all of the credits available relative to the competitive products activity, it may choose not to avail itself of these credits.

V. Periodic Reporting Requirements

Section 2011(h)(2)(B)(i)(III) provides for the submission by the Postal Service of annual and other periodic reports concerning competitive products setting forth such information as the Commission may require. In line with this provision, Treasury recommended that the Postal Service should ''provide sufficient accounting and financial statements of operations reporting and supporting information for the theoretical USPS competitive enterprise.'' Treasury Report at 29.

The Postal Service proposes to use an accounting and reporting methodology which it claims will satisfy the requirements set forth in the PAEA and follows closely the recommendations of the Department of Treasury. Using current GAAP-related accounting and

[42] The three retirement programs are the Civil Service Retirement System (CSRS), the Dual Civil Service Retirement System/Social Security (Dual CSRS), or the Federal Employees Retirement System (FERS). United States Postal Service Annual Report 2007, Note 10, at 49–51.

[43] This area of Postal Service pension costs and plans should be revisited starting in 2017 when actuarial calculations required by section 802 of the PAEA could show an underfunded liability with respect to the Postal Service employees. Public Law 109–435, 120 stat. 3249, December 20, 2006.

[44] United States Postal Service Annual Report 2007 at 51–52.

costing systems, the Postal Service proposes, as indicated above, to produce three financial reports on competitive products financial activities: (1) An Annual Income Report; (2) an Annual Financial Status Report; and (3) an Annual Identified Property and Equipment Assets Report. The Postal Service's proposal involves the use of its current chart of accounts. *Id.* at 9–11.

As proposed by the Postal Service, the Annual Income Report would be derived from the data provided in the Annual Compliance Report. Using the results from the Cost and Revenue Analysis (CRA) report, the Annual Income Report would provide the total competitive product revenues less the competitive product attributable costs, competitive product group specific costs and the required competitive products' share of total institutional costs (currently set at 5.5 percent) at the end of each fiscal year. This computation would determine the total income of competitive products before payment of the assumed Federal income tax due on competitive products income.

The Commission accepts the Postal Service's proposed Annual Income Report as the basis of the assumed Federal income tax. The Commission has developed a format, which is incorporated into the proposed rules as Table 1. The data in the report should be traceable to the information supplied by the Postal Service that backs up the annual CRA report filed as part of the Annual Compliance Report. The Commission will also require that the Postal Service include as attachments to the income statement notes that show the source of the revenue and cost data used to produce the annual income statement and an explanation of the investments used to produce any investment income. The notes should also explain the calculation of the assumed Federal income tax and any special rules or accounting methods used to determine the tax.

The Postal Service's proposed competitive products enterprise Annual Financial Status Report would report the cumulative annual income for competitive products, the total financial obligations (outstanding debt) of competitive products, and the total financial investments of competitive products. This Annual Financial Status Report would show the balances at the beginning of the fiscal year, the annual changes from the prior year, and the ending values for the fiscal year for income, debt, and investments. The data underlying the Annual Financial Status Report would be derived from the Competitive Products Annual Income Report and the accounts reported in the system of accounts trial balance and the balance sheet of the audited financial statements. The Postal Service notes that it would identify the investments and obligations used solely by competitive products with a unique 3-digit sub-account number attached to the appropriate accounts in the General Ledger (Chart of Accounts). *Id.* at 14–16. The Postal Service would not attempt to allocate a portion of shared investments and obligations of the competitive products.

The Commission agrees with the Postal Service on the provision of the Annual Financial Status Report. The cumulative net income (loss) in the first line of the Financial Status Report is akin to the retained earnings column in the Statement of Changes in Net Capital as reported in the annual Consolidated Financial Statements. Additionally, a list of the obligations (type of obligation including interest rate) and investments would need to be included in this report.

The Public Representative remarks that the Annual Income Statement and the Annual Financial Status Report proposed by the Postal Service would rely on data inputs from the ACR. Public Representative Reply Comments at 3. It recommends that inputs should be allowed from the ACR as well as other sources the Commission deems to be appropriate. *Id.* It considers this advisable because the Postal Service voluntarily produced an ACR in 2008 prior to the Commission issuing final regulations as to what the Postal Service's specific annual reporting requirements should be. *Id.* The Commission recommends that all applicable data, including the ACR data and supporting documents, be used in compiling the required reports.

Lastly, the Postal Service proposes an Annual Identified Property and Equipment Assets Report that would list and value any property and equipment used specifically to provide competitive products. The Postal Service notes that currently there are no identifiable assets that can be specifically associated with competitive products. However, that does not preclude competitive product assets from being added in the future. The Postal Service proposes to use specific finance numbers (7-digit numbers associated with facilities or operational units) to identify assets used exclusively for competitive products. The Postal Service, however, only proposes assigning finance numbers if they decide to establish separate units for processing, transportation, delivery, or administrative functions for competitive products. Postal Service Comments at 17–18. Again, it does not propose to allocate a portion of shared assets to competitive products.

The Public Representative suggests that the Postal Service should be required to file an Annual Identified Property and Equipment Assets Report regardless of whether the Postal Service has identifiable assets that can be specifically associated with competitive products for any given year. Public Representative Comments at 4. It recommends that if no such assets can be reliably identified the report could be called ''Statement in Lieu of Asset Report.'' *Id.* The Commission supports this suggestion.

Formats for the Financial Status Report and the Annual Identified Property and Equipment Asset Report as developed by the Commission are incorporated into the proposed rules as Tables 2 and 3.

The PAEA requires valuation of both assets and liabilities. In its initial comments, the Postal Service contends:

> The annual income statement for Competitive Products will therefore be based on an allocation of total accrued revenues and accrued expenses to the competitive products, which, in turn, are based on economic and statistical analyses. Cash inflows from postage sales, meter settings, and trust account deposits cannot be identified by the product or service. Cash outflows for salaries and benefits, transportation, equipment, and other purchases pay for services and assets used by all products, and they cannot be identified by the product or service provided using the resource. There is no way, short of establishing a physically separate business entity with its own retail windows, labor force, and network, to create a balance sheet and track cash flows for competitive products.

Postal Service Comments at 8 (emphasis in original).

However, as discussed in detail above, it is possible to make a reasonable assignment of assets and liabilities to competitive products each year, and create a pro forma balance sheet, based on the same allocations of total accrued revenues and expenses used in the annual income statement. While the balance sheet will not be in strict compliance with generally accepted accounting principles, it will increase transparency and facilitate calculation of the assumed Federal income tax. The Commission believes that calculating and reporting just the assets allocable to competitive products will result in a distorted view of the strength of the competitive products enterprise.[45] The balance sheet can be

[45] Moreover, beginning in FY 2010, Postal Service financial reports must include segment reporting, Continued

constructed using ratios of revenues and attributable costs that are tied to the assets and liabilities. The format for the balance sheet will follow the current format for the consolidated Postal Service balance sheet and will be incorporated into the proposed rule.

VI. Section-by-Section Analysis of the Proposed Rules

Below, the Commission provides a concise description of each rule designed to assist commenters in understanding the scope and nature of the proposed rules.

Rule 3060.1 Scope. This provision sets forth the scope of the Postal Service's obligation with regard to the assumed Federal income tax due on competitive products income. On an annual basis, the Postal Service must calculate the assumed Federal income tax on competitive products income and transfer any tax due from the Competitive Products Fund to the Postal Service Fund.

Rule 3060.10 Costing. This proposed rule defines income subject to tax as competitive products revenue minus competitive products costs. Competitive products costs are defined as volume-variable costs plus product-specific costs plus group specific costs plus assigned share of institutional costs. All costs are to be calculated using the methodologies most recently approved by the Commission.

Rule 3060.11 Valuation of Assets. This proposed rule sets forth the basis for assigning assets to the theoretical competitive products enterprise.

Rule 3060.12 Asset Allocation. This proposed rule requires the Postal Service to allocate all assets between competitive and market dominant products within 12 months of the effective date of the rule and to use these allocations to prepare the balance sheet required by rule 3060.30.

Rule 3060.13 Valuation of Liabilities. This proposed rule requires the Postal Service to allocate all liabilities between competitive and market dominant products within 12 months of the effective date of the rule and to use these allocations to prepare the balance sheet required by rule 3060.30.

Rule 3060.14 Competitive Products Balance Sheet. This proposed rule directs the Postal Service to prepare a competitive products balance sheet no later than FY 2010.

Rule 3060.20 Reports. This proposed rule sets forth the accounting procedures to be used for reporting on the theoretical competitive products enterprise. It sets the deadline for filing the reports at January 15; requires that each report include workpapers citing all numbers to primary sources and notes that provide summary descriptions of computations used, assumptions made, and other relevant information; specifies the books of accounts and data collection systems to be used; and requires the Postal Service to use the same accounting practices for future reports as approved by the Commission in its review of the January 15, 2009 reports unless changed by the Commission. The proposed rule also specifies the procedures which the Postal Service must use for any proposed changes in accounting practices.

Rule 3060.21 Income Report. This proposed rule requires the Postal Service to file an income report for the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.22 Financial Status Report. This proposed rule requires the Postal Service to file a report showing changes in net income, financial obligations, and financial investments for the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.23 Identified Property and Equipment Assets Report. This proposed rule requires the Postal Service to file a report showing net book value for assets devoted to the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.24 Competitive Products Fund Report. This proposed rule requires the Postal Service to file with the Commission a copy of the report filed with the Secretary of the Treasury pursuant to 39 U.S.C. 2011(i)(1).

Rule 3060.30 Pro Forma Balance Sheet. This proposed rule requires the Postal Service to file a report showing how total assets and liabilities of the Postal Service are allocated to the theoretical competitive products enterprise and specifies the form and content of the report.

Rule 3060.31 Initial Filing. This proposed rule sets the date for filing the first pro forma balance sheet at January 15, 2010, a year later than for other reports.

Rule 3060.40 Calculation of the Assumed Federal Income Tax. This proposed rule addresses how the assumed Federal income tax must be calculated and discusses the timing of such calculations. The proposed rule states that the assumed Federal income tax on competitive products income must be calculated in compliance with chapter 1 of the IRC. A calculation under chapter 1 of the IRC requires the computation of the competitive products' assumed tax liability at either the section 11 (regular) or section 55(b)(1)(B) (AMT) tax rates, as applicable. The provision further provides that no estimated taxes need to be calculated or paid and also states that no state, local, or foreign taxes need to be calculated or paid.

With regard to the timing of the calculation of the assumed Federal income tax, the proposed rule provides that the end of the fiscal year for the calculation of the tax shall be September 30 (which coincides with the Postal Service's regular fiscal year end). The provision further requires that the assumed Federal income tax must be calculated by January 15 of the following year.

Rule 3060.41 Supporting Documentation. This proposed rule specifies the underlying details that the Postal Service must provide to support its calculation of tax liability under rule 3060.40.

Rule 3060.42 Commission Review. This proposed rule states that the Commission will review the documentation submitted under rule 3060.41 and issue an order on its findings by July 15. The proposed rule also states that the Commission may order the Postal Service to cure or explain any errors, omissions, or other deficiencies discovered within 3 years of a filing pursuant to rule 3060.40.

Rule 3060.43 One-Time Extension. The proposed rule allows for a one-time extension of 6 months, until July 15, 2009, for the calculation of the assumed Federal income tax due for fiscal year end September 30, 2008.

Rule 3060.44 Annual Transfer from Competitive Products Fund to the Postal Service Fund. This proposed rule provides a ''payment'' method for the assumed Federal income tax due on competitive products' income. On an annual basis, the Postal Service must transfer the assumed Federal income tax due on competitive products income from the Competitive Products Fund to the Postal Service Fund. As long as a tax is actually due, it must be transferred to the Postal Service Fund no later than January 15 of the year following the close of the fiscal year. As with the calculation in proposed rules 3060.40 and 3060.43, a one-time 6-month extension, until July 15, 2009, is granted for the transfer of the assumed Federal income tax due for fiscal year end September 30, 2008.

i.e., a requirement that the Postal Service address the activities of its market dominant and competitive products business segments. *See* 39 U.S.C. 3654(b)(3)(A).

Under this proposed rule, if competitive products' assumed taxable income for a given fiscal year is negative, the Postal Service is not required to pay a tax for that year, but may be entitled to claim a loss. If a payment was made to the Postal Service Fund in the previous year, the Postal Service may transfer the lesser of (1) the amount paid into the Postal Service Fund in the past 2 years, or (2) the amount of the loss to the Postal Service Fund. This transfer must also be made no later than January 15 of the year following the end of the fiscal year. If, however, no payment was made into the Postal Service Fund in the previous 2 years, the loss may only be carried forward and offset against any calculated assumed Federal income tax on competitive products income for the following 20 years.

VII. Proposed Rules [see below]

VIII. Ordering Paragraphs

It is Ordered:

1. Docket No. RM2008–5 is established for the purpose of receiving comments on the Commission's proposed rules under the Postal Accountability and Enhancement Act regarding the accounting practices and principles to be followed by the Postal Service as well as the substantive and procedural rules for determining the assumed Federal income tax on competitive products income.

2. Interested persons may submit initial comments no later than 30 days from the date of publication of this Notice in the **Federal Register**.

3. Reply comments may be filed no later than 45 days from the date of publication of this Notice in the **Federal Register**.

4. Patricia A. Gallagher is designated as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

List of Subjects in 39 CFR Part 3060

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

By the Commission.

Issued September 11, 2008.

Steven W. Williams,

Secretary.

For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission proposes to amend 39 CFR chapter III by adding part 3060 to read as follows:

PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

Sec.

3060.1 Scope.
3060.10 Costing.
3060.11 Valuation of Assets.
3060.12 Asset Allocation.
3060.13 Valuation of Liabilities.
3060.14 Competitive Products Enterprise Balance Sheet.
3060.20 Reports.
3060.21 Income Report.
3060.22 Financial Status Report.
3060.23 Identified Property and Equipment Assets Report.
3060.24 Competitive Products Fund Report.
3060.30 Pro Forma Balance Sheet.
3060.31 Initial Filing.
3060.40 Calculation of the Assumed Federal Income Tax.
3060.41 Supporting Documentation.
3060.42 Commission Review.
3060.43 Annual Transfer from Competitive Products Fund to Postal Service Fund.

Authority: 39 U.S.C. 503; 2011; 3633; 3634.

§ 3060.1 Scope.

The rules in this part are applicable to the Postal Service's theoretical competitive products enterprise developed pursuant to 39 U.S.C. 2011 and 3634 and to the Postal Service's obligation to calculate annually an assumed Federal income tax on competitive products income and transfer annually any such assumed Federal income tax due from the Competitive Products Fund to the Postal Service Fund.

§ 3060.10 Costing.

(a) The assumed taxable income from competitive products for the Postal Service's theoretical competitive products enterprise for a fiscal year shall be based on total revenues generated by competitive products during that year less the costs identified in paragraph (b) of this section calculated using the methodology most recently approved by the Commission.

(b) The net income for the Postal Service's theoretical competitive products enterprise shall reflect the following costs:

(1) Attributable costs, including volume variable and product specific costs;

(2) Group specific costs defined as those costs incurred in the provision of competitive products as a whole, which cannot be causally related to any specific competitive product; and

(3) The appropriate share of institutional costs assigned to competitive products by the Commission pursuant to 39 U.S.C. 3633(a)(3).

§ 3060.11 Valuation of Assets.

For the purposes of 39 U.S.C. 2011, the total assets of the Postal Service theoretical competitive products enterprise are the greater of:

(a) The percentage of total Postal Service revenues and receipts from competitive products times the total net assets of the Postal Service, or

(b) The net assets related to the provision of competitive products as determined pursuant to § 3060.12.

§ 3060.12 Asset Allocation.

Within 6 months of the effective date of these rules, and for each fiscal year thereafter, the Postal Service will develop the net assets of the theoretical competitive products enterprise as follows:

(a) Identify all asset accounts within the Postal Service's Chart of Accounts used solely for the provision of competitive products.

(b) Identify all asset accounts within the Postal Service's Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of asset accounts in the Postal Service's Chart of Accounts that are not identified in either paragraphs (a) or (b) of this section shall be assigned to the Postal Service theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of the effective date of these rules the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each asset account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in § 3050.11 of this chapter.

§ 3060.13 Valuation of Liabilities.

Within 6 months of the effective date of these rules, and for each fiscal year thereafter, the Postal Service will develop the liabilities of the theoretical competitive products enterprise as follows:

(a) Identify all liability accounts within the Postal Service's Chart of Accounts used solely for the provision of competitive products.

(b) Identify all liability accounts within the Postal Service's Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of liability accounts in the Postal Service's Chart of Accounts

that are not identified in either paragraphs (a) or (b) of this section shall be assigned to the theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of the effective date of these rules the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each liability account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in § 3050.11 of this chapter.

§ 3060.14 Competitive Products Enterprise Balance Sheet.

The Postal Service will report the assets and liabilities of the theoretical competitive products enterprise as computed under §§ 3060.12 and 3060.13 in the format as prescribed under § 3060.30 for each fiscal year starting with FY 2010.

§ 3060.20 Reports.

(a) The Postal Service shall file with the Commission each of the reports required by this part by no later than January 15 of each year.

(b) Each report shall include workpapers that cite all numbers to primary sources and such other information needed to present complete and accurate financial information concerning the provision of competitive products.

(c) Each report shall utilize the same books of accounts and data collection systems used to produce the report required by part 3050 of this chapter.

(d) Each report shall include summary descriptions of computations used, assumptions made, and other relevant information in the form of notes to the financial statements.

(e) The accounting practices used by the Postal Service in the reports filed January 15, 2009, as approved by the Commission, shall be used for all future reports until such time as they may be changed by the Commission. If the Postal Service desires to change such practices, it shall utilize the procedures provided in § 3050.11 of this chapter.

§ 3060.21 Income Report.

The Postal Service shall file an Income Report in the form and content of Table 1, below.

TABLE 1—PROPOSED COMPETITIVE PRODUCTS INCOME STATEMENT

[$ in 000s]

	FY 20xx	FY 20xx–1	% Change from SPLY	% Change from SPLY
Revenue:				
(1) Mail and Services Revenues	$x,xxx	$x,xxx	$xxx	xx.x
(2) Investment Income	xxx	Xxx	xx	xx.x
(3) Total Competitive Products Revenue	x,xxx	x,xxx	xxx	xx.x
Expenses:				
(4) Volume-Variable Costs	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs	x,xxx	x,xxx	xxx	xx.x
(6) Group Specific Costs	x,xxx	x,xxx	xxx	xx.x
(7) Total Competitive Products Attributable Costs	x,xxx	x,xxx	xxx	xx.x
(8) Net Income Before Institutional Cost Contribution	x,xxx	x,xxx	xxx	.....
(9) Required Institutional Cost Contribution (5.5)	x,xxx	x,xxx	xxx	x.x
(10) Net Income (Loss) Before Tax	x,xxx	x,xxx	xxx	.....
(11) Assumed Federal Income Tax	x,xxx	x,xxx	xxx	xx.x
(12) Net Income (Loss) After Tax	x,xxx	x,xxx	xxx	xx.x

Line (1): Total revenues from competitive products volumes and Ancillary Services.
Line (2): Income provided from investment of surplus competitive products revenues.
Line (3): Sum total of revenues from competitive products volumes, services, and investments.
Line (4): Total competitive products volume variable costs as shown in the Cost and Revenue Analysis (CRA) report.
Line (5): Total competitive products volume variable costs as shown in the CRA report.
Line (6): Total competitive products specific fixed costs not attributable to a specific competitive product.
Line (7): Sum total of competitive products costs (sum of lines 4–6).
Line (8): Difference between competitive products total revenues and attributable costs (line 3 less line 7).
Line (9): Minimum amount of Institutional Cost contribution required under 39 CFR 3015.7 of this chapter.
Line (10): Line 8 less line 9.
Line (11): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (12): Line 10 less line 11.

§ 3060.22 Financial Status Report.

The Postal Service shall file a Financial Status Report in the form and content of Table 2, below.

TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS

	Beginning value	Change from prior year	Ending value
(1) Cumulative Net Income (Loss) After Assumed Federal Income Tax			
(2) Total Financial Obligations (List of Financial Obligations)			
(3) Total Financial Investments (List of Financial Investments)			

Line 1: Beginning Value: Sum total of Net Income (Loss) as of October 1 of Reportable Fiscal Year Change from Prior Year: Amount of Net Income (Loss) of Reportable Fiscal Year Ending Value: Sum of Beginning Value and the Change from Prior Year.
Line 2: Beginning Value: Sum total of Financial Obligations as of October 1 of Reportable Fiscal Year Change from Prior Year: Amount of Net Financial Obligations of Reportable Fiscal Year Ending Value: Sum of Beginning Value and the Change from Prior Year.
Line 3: Beginning Value: Sum total of Financial Investments as of October 1 of Reportable Fiscal Year Change from Prior Year: Amount of Net Financial Investments of Reportable Fiscal Year Ending Value: Sum of Beginning Value and the Change from Prior Year.

§ 3060.23 Identified Property and Equipment Assets Report.

The Postal Service shall file an Identified Property and Equipment Assets Report in the form and content of Table 3, below.

TABLE 3—IDENTIFIED PROPERTY AND EQUIPMENT ASSETS REPORT

Finance number	Finance location	Asset identifier	Asset description	Cost	Accumulated depreciation	Net book value
Total				$x,xxx	$x,xxx	$x,xxx

§ 3060.24 Competitive Products Fund Report.

Within 90 days of the close of each fiscal year the Postal Service will provide the most recent report of the activity of the Competitive Products Fund as provided to the Secretary of the Treasury under 39 U.S.C. 2011(i)(1).

§ 3060.30 Pro Forma Balance Sheet.

(a) The Postal Service shall file a Pro Forma Balance Sheet in the form and content of Table 4, below.

TABLE 4—COMPETITIVE PRODUCTS PRO FORMA BALANCE SHEET

Total net assets	USPS annual report	FY 20XX competitive products	FY 20XX–1 competitive products	Distributed on basis of:
Cash and Cash Equivalents	$x,xxx	$x,xxx	$x,xxx	
Net Accounts Receivable	x,xxx	x,xxx	x,xxx	
Supplies, Advances, and Prepayments	x,xxx			
Appropriations Receivable—Revenue Foregone	x,xxx			
Total Current Assets	x,xxx	x,xxx	x,xxx	
Property and Equipment Buildings	x,xxx	x,xxx	x,xxx	
Leasehold Improvements	x,xxx	x,xxx	x,xxx	
Equipment	x,xxx	x,xxx	x,xxx	
Land	x,xxx	x,xxx	x,xxx	
Accumulated Depreciation	x,xxx	x,xxx	x,xxx	
Construction in Progress	x,xxx	x,xxx	x,xxx	
Total Property and Equipment, Net	x,xxx	x,xxx	x,xxx	
Total Assets	x,xxx	x,xxx	x,xxx	
Total Assets Determined from Section 2011(e)(5)	x,xxx	x,xxx	x,xxx	

Total net liabilities	USPS annual report	FY 20XX competitive products	FY 20XX–1 competitive products	Distributed on basis of:
Liabilities:				
Current Liabilities:				
Compensation and Benefits	$x,xxx	$x,xxx	$x,xxx	
Payables and Accrued	x,xxx	x,xxx	x,xxx	
Expenses:				
Customer Deposit Accounts	x,xxx	x,xxx	x,xxx	
Deferred Appropriation and	x,xxx			
Other Revenue:				
Long-Term Portion Capital Lease Obligations	x,xxx	x,xxx	x,xxx	
Deferred Gains on Sales of Property	x,xxx	x,xxx	x,xxx	

Total net liabilities	USPS annual report	FY 20XX competitive products	FY 20XX–1 competitive products	Distributed on basis of:
Contingent Liabilities and Other	x,xxx			
Total Liabilities	x,xxx	x,xxx	x,xxx	

(b) The Pro Forma Balance Sheet shall detail the analysis and selection of methods of allocation of total assets and liabilities to the competitive products.

§ 3060.31 Initial Filing.

The due date for filing the initial Pro Forma Balance Sheet is January 15, 2010.

§ 3060.40 Calculation of the Assumed Federal Income Tax.

(a) The assumed Federal income tax on competitive products income shall be based on the Postal Service theoretical competitive products enterprise income statement for the relevant year and must be calculated in compliance with chapter 1 of the Internal Revenue Code by computing the tax liability on the taxable income from the competitive products of the Postal Service theoretical competitive products enterprise at 26 U.S.C. 11 (regular) or 26 U.S.C. 55(b)(1)(B) (Alternative Minimum Tax) tax rates, as applicable.

(b) The end of the fiscal year for the annual calculation of the assumed Federal income tax on competitive products income shall be September 30.

(c) The calculation of the assumed Federal income tax due shall be submitted to the Commission no later than January 15 next occurring following the close of the fiscal year referenced in paragraph (b) of this section, except that a one-time extension of 6 months, until July 15, 2009, shall be permitted for the calculation of the assumed Federal income tax due for fiscal year end September 30, 2008.

(d) No estimated taxes need to be calculated or paid.

(e) No state, local, or foreign taxes need to be calculated.

§ 3060.41 Supporting Documentation.

(a) In support of its calculation of the assumed Federal income tax, the Postal Service shall file detailed schedules reporting the Postal Service theoretical competitive products enterprise assumed taxable income, effective tax rate, and tax due.

(b) Adjustments made to book income, if any, to arrive at the assumed taxable income for any year shall be submitted to the Commission no later than January 15 of the following year.

§ 3060.42 Commission Review.

(a) The Commission will review the supporting documentation submitted by the Postal Service pursuant to § 3060.41 and issue an order either approving the calculation of the assumed Federal income tax for that tax year or taking such other action as the Commission deems appropriate, including, but not limited to, directing the Postal Service to file additional supporting materials.

(b) The Commission will issue such order no later than 6 months after the Postal Service's filing pursuant to § 3060.40.

(c) Notwithstanding paragraph (b) of this section, if the Commission determines within 3 years of its submission that the Postal Service's calculation of an assumed Federal income tax is incomplete, inaccurate, or otherwise deficient, the Commission will notify the Postal Service in writing and provide it with an opportunity to cure or otherwise explain the deficiency. Upon receipt of the Postal Service's responsive pleading, the Commission may order such action as it deems appropriate.

§ 3060.43 Annual Transfer from Competitive Products Fund to Postal Service Fund.

(a) The Postal Service must on an annual basis transfer the assumed Federal income tax due on competitive products income from the Competitive Products Fund to the Postal Service Fund.

(b) If the assumed taxable income from competitive products for a given fiscal year is positive, the assumed Federal income tax due, calculated pursuant to § 3060.40, shall be transferred to the Postal Service Fund no later than January 15 next occurring following the close of the relevant fiscal year.

(c) A one-time extension of 6 months, until July 15, 2009, shall be permitted for the transfer of the assumed Federal income tax due for fiscal year ending September 30, 2008.

(d) If assumed taxable income from competitive products for a given fiscal year is negative:

(1) If a payment was made to the Postal Service Fund for the previous tax year, a transfer equaling the lesser of the amount paid into the Postal Service Fund for the past 2 tax years or the amount of the loss shall be made from the Postal Service Fund to the Competitive Products Fund no later than January 15 next occurring following the close of the relevant fiscal year; or

(2) If no payment has been made into the Postal Service Fund for the previous 2 tax years, the loss may be carried forward and offset against any calculated assumed Federal income tax on competitive products income for 20 years.

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Federal Register

Friday,
September 19, 2008

Part IV

The President

Proclamation 8290—National POW/MIA Recognition Day, 2008

Federal Register
Vol. 73, No. 183
Friday, September 19, 2008

Presidential Documents

Title 3—

The President

Proclamation 8290

National POW/MIA Recognition Day, 2008

By the President of the United States of America

A Proclamation

On National POW/MIA Recognition Day, we honor the brave and patriotic Americans who were held as prisoners of war, and we remember those who are still missing in action. For their valor and selfless devotion to protect the country they love, our Nation owes them a debt we can never fully repay. On this day we underscore our commitment and pledge to those who are still missing in action and to their families that we will not rest until we have achieved the fullest possible accounting for every member of our Armed Forces missing in the line of duty.

To observe this important day, the National League of Families POW/MIA flag is flown over the Capitol, the White House, the World War II Memorial, the Korean War Veterans Memorial, the Vietnam Veterans Memorial, and other locations across our country. The flag is a solemn reminder of our Nation's enduring obligation and promise to our courageous service members who remain missing and a tribute to those who have been imprisoned while serving their country in conflicts around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 19, 2008, as National POW/MIA Recognition Day. I call upon the people of the United States to join me in honoring and remembering all former American prisoners of war and those missing in action for their valiant service to our Nation. I also call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.



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Reader Aids

Federal Register

Vol. 73, No. 183

Friday, September 19, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51209–51350 2
51351–51572 3
51573–51716 4
51717–51898 5
51899–52170 8
52171–52572 9
52573–52774 10
52775–52902 11
52903–53104 12
53105–53354 15
53355–53684 16
53685–54056 17
54057–54288 18
54289–54486 19

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of August 28, 2008) 51211
8284 51213
8285 51897
8286 52773
8287 54051
8288 54053
8289 54289
8290 54485
Executive Orders:
13285 (Amended by 13471) 51209
13471 51209
13472 53353
Administrative Orders:
Notices:
Notice of August 28, 2008 51211
Presidential Determinations:
No. 2008-23 of July 25, 2008 54281
No. 2008-24 of August 15, 2008 54283
No. 2008-25 of August 28, 2008 54285
No. 2008-26 of September 10, 2008 54287
No. 2008-27 of September 12, 2008 54055

5 CFR

532 54057
Proposed Rules:
302 51944
330 51944
332 51245
335 51944
337 51944
410 ..... 51248, 51944
412 51248
752 54075

7 CFR

6 53355
205 54057
210 52903
220 52903
301 51717
457 51573
550 54291
613 51351
946 52573
948 52171
1000 51352
1291 51585
1951 54305
3430 51717
4274 54305
Proposed Rules:
301 54082

9 CFR

71 ..... 52173, 54059
77 ..... 52775, 54059, 54063
78 ..... 51353, 54059
79 54059
80 54059
83 52173
93 52173
317 52189
318 52193
381 ..... 51899, 52189, 52193
430 51355
439 52193
442 52189
Proposed Rules:
94 54083
95 54083

10 CFR

50 52730
900 54456
Proposed Rules:
73 51378
430 54089
900 54461

11 CFR

Ch. II 54256
9409 54270
9411 54270
9420 54270
Proposed Rules:
100 51960
104 51960

12 CFR

8 52576
202 53685
223 54307
229 52908
1231 ..... 53356, 54309

14 CFR

39 ..... 51903, 51906, 51908, 51910, 51912, 52201, 52203, 52205, 52777, 52909, 52911, 52914, 53105, 54065, 54067
71 ..... 51356, 51357, 52208, 52209, 53113
73 ..... 52916, 53359
95 51591
97 ..... 51215, 51358, 52779, 52782
382 53114
Proposed Rules:
39 ..... 51252, 51384, 51382, 51604, 51961, 52932, 53764, 53766, 53768, 53770, 53773

71 .....51252, 51254, 51605, 52638, 52934, 54091, 54092, 54093

15 CFR

738.....51217
740.....51217
774.....51718
Proposed Rules:
801.....54095
806.....52800, 52802
922.....53161

16 CFR

Proposed Rules:
317.....53393, 53394
1500.....51384, 51386

17 CFR

3.....54069
30.....54069
239.....52752
240.....52752
249.....52752
Proposed Rules:
1.....54097
38.....54097
40.....51961
41.....51961
145.....51961

18 CFR

Proposed Rules:
35.....51744

19 CFR

12.....54309
122.....52577
Proposed Rules:
4.....51962
7.....51962
10.....51962
102.....51962
134.....51962
177.....51962

20 CFR

Proposed Rules:
404.....51963
408.....51963
416.....51963
422.....51963

21 CFR

16.....51912, 54314
210.....51919
211.....51919
520.....53685
610.....54314
640.....54314
803.....53686
812.....54314
814.....54314
822.....54314
860.....54314
1240.....51912
Proposed Rules:
1.....54106
129.....53775
165.....53775
878.....52804

22 CFR

121.....54314
122.....52578
1304.....53686

24 CFR

206.....51596
Proposed Rules:
26.....52122
28.....52130
201.....53346
203.....53346
1003.....52166

25 CFR

Proposed Rules:
293.....51255

26 CFR

1 .....51719, 52528, 53934
301.....52784
602.....52528, 53934
Proposed Rules:
1 .....51747, 52218, 52220, 53793
301.....52805

29 CFR

4022.....53115
4044.....53115
Proposed Rules:
1910 .....54118, 54123, 54340
1915.....54123, 54340
1917.....54123
1918.....54123
1926.....54123
2700.....51256

30 CFR

6.....52210
7.....52210
15.....52210
18.....52210
19.....52210
20.....52210
22.....52210
23.....52210
27.....52210
28.....52210
33.....52210
35.....52210
36.....52210
49.....53116
74.....52210
75.....53124
256.....52917
934.....52921
Proposed Rules:
56.....52136
57.....52136
66.....52136
250.....53793

31 CFR

1.....51218
50.....53359
210.....52578
501.....51933
Proposed Rules:
50.....53798

33 CFR

100.....51221
105.....52924, 53128
117 .....51361, 52924, 52925, 54072
138.....53691
165 .....51362, 51365, 51597, 51719, 51941, 52788, 53128, 54315
334.....52926, 54072
Proposed Rules:
117.....52934
165.....53395, 53398

34 CFR

Proposed Rules:
Ch. VI.....51990

36 CFR

7.....54317
215.....53705
218.....53705
Proposed Rules:
223.....51388
294.....54125

39 CFR

3020.....51714
Proposed Rules:
3001 .....51888, 51983, 53324
3030.....51888
3031.....51888
3050.....53324
3060.....54468

40 CFR

35.....52584
52 .....51222, 51226, 51599, 53130, 53132, 53134, 53137, 53366, 53373, 53378, 53716
55.....53718
70.....53137
130.....52928
131.....53140
174.....52591
180 .....51722, 51727, 51732, 51736, 51738, 52594, 52597, 52603, 52607, 52616, 53721, 53725, 53732
282.....53742
300.....51368, 53143
Proposed Rules:
52 .....51257, 51258, 51606, 52226, 53162, 53163, 53401, 53403, 53404
55.....51610
63.....53163
70.....53163
81.....51259
131.....53178
300.....51393, 53179

41 CFR

302-17.....51228

42 CFR

412.....52928
417.....54073, 54226
422.....54208, 54226
423.....54208, 54226

43 CFR

Proposed Rules:
419.....53180

44 CFR

64.....53747, 53748
65 .....52619, 53750, 54321
67.....52621
Proposed Rules:
67 .....51400, 52230, 52233, 52234, 53809, 53814

45 CFR

2.....53148
2510.....53752
2513.....53752
2516.....53752
2517.....53752
2520.....53752
2521.....53752
2522.....53752
2523.....53752
2524.....53752
2540.....53752
2541.....53752
2550.....53752

46 CFR

10.....52789
15.....52789

47 CFR

2.....51375
15.....51375
27.....51375, 54324
73 .....52213, 54073, 54324
74.....51375
97.....54074
301.....54325
Proposed Rules:
2.....51406
15.....51406
27.....51406
73.....52937
74.....51406

48 CFR

Ch. 1.....53990, 54016
2.....53992, 53993
4.....53994
5.....53995
6.....53995, 53996
8.....53994
9.....53994
12 .....53995, 53997, 54007
13.....54008
15.....54016
16.....54008
18.....53994, 53995
19.....53993
23.....54011
26.....53995
30.....54011, 54013
32.....53997
33.....53997
36.....53997
37.....54014
42.....53997
44.....53994
52 .....53992, 53994, 53995, 53997, 54011, 54013, 54014, 54016
202.....53151
206.....53151
225.....53151
237.....53156
252.....53151
511.....54334
516.....54334
532.....54334
538.....54334
546.....54334
552.....54334
Proposed Rules:
505.....53404
1652.....51260
1819.....54340

1852.....54340
9904.....51261

49 CFR

385.....53383
605.....53384

Proposed Rules:

172.....52558
192.....52938, 53076
193.....53076
195.....53076
225.....52496
571.....52939, 54020

50 CFR

20.....51704
216.....53157
229.....51228
300.....52795
648 .....51743, 52214, 52634, 52635, 52929, 53158
660.....53763
679 .....51242, 51243, 51601, 51602, 52217, 52637, 52797, 52798, 52929, 52930, 53159, 53390

Proposed Rules:

17 .....51415, 52235, 52257, 53492, 54125, 54345
223.....51615
224.....51415, 51615
226.....51747, 52084
402.....52942
600.....54132
622.....51617
665.....51992
679.....53816
680.....52806, 54346

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 19, 2008

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:

Amendment to the National List of Allowed and Prohibited Substances (Livestock); published 9-18-08

FEDERAL COMMUNICATIONS COMMISSION

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, etc.; published 9-19-08

FEDERAL HOUSING FINANCING AGENCY

Golden Parachute Payments and Indemnification Payments; published 9-19-08

GENERAL SERVICES ADMINISTRATION

Acquisition Regulation:

Cooperative Purchasing-Acquisition of Security and Law Enforcement Goods and Services by State and Local Governments Through Federal Supply Schedules; published 9-19-08

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

FDA Regulations; Technical Amendment; Correction; published 9-19-08

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Archaeological Material from Cambodia; Extension of Import Restrictions Imposed; published 9-19-08

HOMELAND SECURITY DEPARTMENT

Coast Guard

Special Local Regulation:

Thunderboat Regatta; Mission Bay, San Diego, CA; published 6-23-08

STATE DEPARTMENT

International Traffic in Arms Regulations:

U.S. Munitions List Interpretation; published 9-19-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Reduction of Fuel Tank Flammability in Transport Category Airplanes; published 7-21-08

TREASURY DEPARTMENT

Archaeological Material from Cambodia; Extension of Import Restrictions Imposed; published 9-19-08

RULES GOING INTO EFFECT SEPTEMBER 20, 2008

FEDERAL RESERVE SYSTEM

Availability of Funds and Collection of Checks; published 7-18-08

HOMELAND SECURITY DEPARTMENT

Coast Guard

Special Local Regulations for Marine Events:

Choptank River, Cambridge, MD; published 8-27-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton Board Rules and Regulations; Adjusting Supplemental Assessment on Imports (2008 Amendments); comments due by 9-22-08; published 7-24-08 [FR E8-16957]

Temporary Suspension of Order Provisions Regarding Continuance Referenda:

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; comments due by 9-26-08; published 8-27-08 [FR E8-19749]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Tuberculosis; Require Approved Herd Plans Prior to Payment of Indemnity; comments due by 9-22-08; published 7-24-08 [FR E8-16949]

COMMERCE DEPARTMENT

International Trade Administration

Watch Movement and Jewelry Programs 2008; Changes in the Insular Possessions; comments due by 9-22-08; published 8-21-08 [FR E8-19411]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries in the Western Pacific:

Western Pacific Pelagic Fisheries; Control Date; Hawaii Pelagic Charter Fishery; comments due by 9-22-08; published 7-22-08 [FR E8-16786]

Magnuson-Stevens Act Provisions; Annual Catch Limits; National Standard Guidelines; comments due by 9-22-08; published 8-13-08 [FR E8-18756]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan; comments due by 9-22-08; published 8-22-08 [FR E8-19580]

Taking of Marine Mammals Incidental to Commercial Fishing Operations:

Atlantic Pelagic Longline Take Reduction Plan; comments due by 9-22-08; published 6-24-08 [FR E8-14274]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 1.2 Past Climate Variability and Change in the Arctic and at High Latitude; comments due by 9-25-08; published 8-11-08 [FR E8-18405]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Order Requesting Supplemental Comments; comments due by 9-22-08; published 7-24-08 [FR E8-16868]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania:

Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides; comments due by 9-25-08; published 8-26-08 [FR E8-19756]

Approval and Promulgation of Air Quality Implementation Plans:

Virginia; Emission Reductions from Large Stationary Internal Combustion Engines and Large Cement Kilns; comments due by 9-22-08; published 8-21-08 [FR E8-19422]

Approval and Promulgation of Implementation Plans and Operating Permits Program:

Iowa; comments due by 9-24-08; published 8-25-08 [FR E8-19519]

Approval and Promulgation of Plans:

North Carolina; Miscellaneous Revisions; comments due by 9-22-08; published 8-22-08 [FR E8-19192]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Lead; Fees for Accreditation of Training Programs and Certification of Lead-Based Paint Activities and Renovation Contractors; comments due by 9-22-08; published 8-21-08 [FR E8-19432]

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, etc.; comments due by 9-22-08; published 8-6-08 [FR E8-18142]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; comments due by 9-22-08; published 8-21-08 [FR E8-19256]

Pesticide Tolerance for Emergency Exemption:

Fludioxonil; comments due by 9-22-08; published 7-23-08 [FR E8-16876]

FEDERAL COMMUNICATIONS COMMISSION

Assessment and Collection of Regulatory Fees (2008 FY); comments due by 9-25-08; published 8-26-08 [FR E8-19431]

Facilitating the Provision of Fixed and Mobile Broadband Access:
Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; comments due by 9-22-08; published 7-8-08 [FR E8-15445]
Radio Broadcasting Services:
Asbury and Maquoketa, IA, and Mineral Point, WI; comments due by 9-22-08; published 8-26-08 [FR E8-19647]
Blythe, CA; comments due by 9-22-08; published 8-26-08 [FR E8-19652]
French Lick, IN; Irvington, KY; comments due by 9-22-08; published 8-26-08 [FR E8-19651]
Sponsorship Identification Rules and Embedded Advertising; comments due by 9-22-08; published 7-24-08 [FR E8-16998]
Television Broadcasting Services:
Madison, WI; comments due by 9-22-08; published 8-22-08 [FR E8-19543]
Television Broadcasting:
Yuma, AZ; comments due by 9-22-08; published 8-22-08 [FR E8-19542]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Irradiation in the Production, Processing, and Handling of Food; comments due by 9-22-08; published 8-22-08 [FR E8-19573]

HEALTH AND HUMAN SERVICES DEPARTMENT

Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law; comments due by 9-22-08; published 8-26-08 [FR E8-19744]

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Uniform Rules of Origin for Imported Merchandise; comments due by 9-23-08; published 7-25-08 [FR E8-17025]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge Operation Regulations:
Islais Creek, San Francisco, CA; comments due by 9-22-08; published 7-24-08 [FR E8-16896]
Special Local Regulation:
Cape Fear Dragon Boat Festival, Wilmington, NC; comments due by 9-27-08; published 8-14-08 [FR E8-18789]

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Domestic Violence Guidance Pamphlet for K Nonimmigrants; comments due by 9-22-08; published 7-22-08 [FR E8-16521]

INTERIOR DEPARTMENT

Land Management Bureau

Oil Shale Management - General; comments due by 9-22-08; published 7-23-08 [FR E8-16275]

INTERIOR DEPARTMENT

National Park Service

Special Regulation; Areas of the National Park System, National Capital Region; comments due by 9-22-08; published 8-8-08 [FR E8-18412]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Montana Regulatory Program; comments due by 9-25-08; published 8-26-08 [FR E8-19712]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Electronic Prescriptions for Controlled Substances; comments due by 9-25-08; published 6-27-08 [FR E8-14405]

NUCLEAR REGULATORY COMMISSION

Natural Resources Defense Council; Receipt of Petition for Rulemaking; Reopening of Public Comment Period; comments due by 9-25-08; published 8-25-08 [FR E8-19609]

PERSONNEL MANAGEMENT OFFICE

Federal Employees Dental and Vision Insurance Program; comments due by 9-25-08; published 8-26-08 [FR E8-19761]

Implementation of the Freedom of Information Act; comments due by 9-22-08; published 7-24-08 [FR E8-16796]

POSTAL REGULATORY COMMISSION

Administrative Practice and Procedure, Confidential Business Information, Postal Service; comments due by 9-25-08; published 8-26-08 [FR E8-19677]

POSTAL SERVICE

New Automation Requirements for Detached Addressed Labels; comments due by 9-26-08; published 8-27-08 [FR E8-19803]

SECURITIES AND EXCHANGE COMMISSION

Proposed Amendment to Municipal Securities Disclosure; comments due by 9-22-08; published 8-7-08 [FR E8-17856]

Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc.; comments due by 9-25-08; published 9-4-08 [FR E8-20464]

SOCIAL SECURITY ADMINISTRATION

Authorization of Representative Fees; comments due by 9-25-08; published 8-26-08 [FR E8-19674]

TRANSPORTATION DEPARTMENT

Procedures for Transportation Workplace Drug Testing Programs; comments due by 9-25-08; published 8-26-08 [FR E8-19816]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:
Airbus Model A310 Series Airplanes; comments due by 9-25-08; published 8-26-08 [FR E8-19715]
Airbus Model A330-200, A330-300, A340-300, A340-500, and A340-600 Series Airplanes; comments due by 9-25-08; published 8-26-08 [FR E8-19716]
BAE Systems (Operations) Limited Model BAe 146 and Avro 146 RJ Airplanes; comments due by 9-22-08; published 8-21-08 [FR E8-19364]
BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146 RJ Airplanes; comments due by 9-25-08; published 8-26-08 [FR E8-19714]
Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters; comments due by 9-26-08; published 7-28-08 [FR E8-17261]
Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes; comments due by 9-23-08; published 8-29-08 [FR E8-20102]
Boeing Model 757-200, 757-200PF, and 757-300 Series Airplanes; comments due by 9-22-08; published 8-7-08 [FR E8-18222]
Boeing Model 777 Airplanes; comments due by 9-22-08; published 8-7-08 [FR E8-18211]
Bombardier Model CL 600 2C10, CL 600 2D15, and CL 600 2D24 Airplanes; comments due by 9-25-08; published 8-26-08 [FR E8-19717]
Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes; comments due by 9-22-08; published 8-21-08 [FR E8-19366]
General Electric Company CF34 1A, 3A, 3A1, 3A2, 3B, and 3B1 Turbofan Engines; comments due by 9-22-08; published 7-23-08 [FR E8-16884]
McDonnell Douglas Model DC-8-11, DC-8-12, DC-8-21, DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 Airplanes et al.; comments due by 9-23-08; published 8-29-08 [FR E8-20085]
McDonnell Douglas Model DC 8 11, DC 8 12, DC 8 21, DC 8 31, DC 8 32, DC 8 33, DC 8 41, DC 8 42, and DC 8 43 Airplanes et al.; comments due by 9-26-08; published 8-12-08 [FR E8-18560]
MD Helicopters, Inc. Model MD900 (including the MD902 Configuration) Helicopters; comments due by 9-26-08; published 7-28-08 [FR E8-17262]
Pratt & Whitney Canada (P&WC) JT15D 5; 5B; 5F; and 5R Turbofan Engines; comments due by 9-22-08; published 8-22-08 [FR E8-19390]
Saab Model SAAB 2000 Airplanes; comments due by 9-23-08; published 8-29-08 [FR E8-20088]
Special Conditions:
Airbus A318, A319, A320, and A321 Series Airplanes; Astronautics electronic flight bags with lithium battery installations; comments

due by 9-22-08; published 8-7-08 [FR E8-18139]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 9-22-08; published 8-22-08 [FR E8-19326]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers over Regular Routes; comments due by 9-22-08; published 8-7-08 [FR E8-18173]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety:

Integrity Management Program for Gas Distribution Pipelines; comments due by 9-23-08; published 6-25-08 [FR 08-01387]

TREASURY DEPARTMENT

Internal Revenue Service

Capital Costs Incurred to Comply With EPA Sulfur Regulations; comments due by 9-25-08; published 6-27-08 [FR E8-14708]

Guidance for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions; comments due by 9-22-08; published 6-24-08 [FR E8-14170]

TREASURY DEPARTMENT

Uniform Rules of Origin for Imported Merchandise; comments due by 9-23-08; published 7-25-08 [FR E8-17025]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2837/P.L. 110–319

To designate the United States courthouse located at 225 Cadman Plaza East, Brooklyn, New York, as the ''Theodore Roosevelt United States Courthouse''. (Sept. 17, 2008; 122 Stat. 3533)

S. 2403/P.L. 110–320

To designate the United States courthouse located in the 700 block of East Broad Street, Richmond, Virginia, as the ''Spottswood W. Robinson III and Robert R. Merhige, Jr., United States Courthouse''. (Sept. 18, 2008; 122 Stat. 3534)

Last List September 17, 2008

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