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Presidential Documents

Title 3—

The President

Proclamation 8311 of October 29, 2008

National Family Caregivers Month, 2008

By the President of the United States of America

A Proclamation

During National Family Caregivers Month we recognize and celebrate the many individuals throughout our country who work each day to ensure a better quality of life for their family members. Through their selfless action, these caregivers provide their loved ones support and comfort as they age, combat illness, or suffer from disability.

Our Nation is compassionate, and we believe in the sanctity of life at all stages. Through tireless efforts and inspiring deeds, many Americans care for loved ones in need. By acting as in-home care providers, people across our Nation are helping to ensure that their family members are provided with love, comfort, and security. My Administration has worked to offer caregivers support and training. In 2006, I signed the Lifespan Respite Care Act of 2006, which established a program to help family caregivers get access to affordable and high-quality respite care. In addition, the National Family Caregiver Support Program encourages cooperation among government agencies and other organizations that support and work with family caregivers.

National Family Caregivers Month is an opportunity to recognize those who serve a cause greater than self and contribute to the well-being of their loved ones. Family caregivers are soldiers in America's armies of compassion and set an inspiring example for their fellow citizens.

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 November 2008 as National Family Caregivers Month. I encourage all Americans to honor the selfless service of caregivers who support their loved ones in need.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, 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
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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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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

RIN 3206–AI19

Reemployment Rights

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations on the detail and transfer of Federal employees to international organizations. The final regulation eliminates the ''equalization allowance,'' modernizes regulatory language, and clarifies that the Department of State is the delegated authority to designate any organization as an international organization.

DATES: This rule is effective on December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jacquelyn A. Carrington at (202) 606–0960, FAX at (202) 606–2329, TDD at (202) 418–3134, or e-mail at *jacquelyn.carrington@opm.gov*.

SUPPLEMENTARY INFORMATION: On October 2, 2007, OPM issued proposed regulations in the **Federal Register** at 72 FR 56019 to make part 352, subpart C, of title 5, Code of Federal Regulations (CFR), consistent with section 3582(b) of title 5, United States Code (U.S.C.). We requested comments on the proposed rule to be submitted by December 3, 2007.

Section 2504 of Public Law 105–277 amended 5 U.S.C. 3582 by eliminating employee entitlement to be paid an ''equalization allowance'' upon return to Federal service from a transfer to an international organization. The equalization allowance was a payment equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the employing agency had the employee been detailed to the international organization. Because of the amendment, an employee who transferred, with the consent of the employing agency, to an international organization on or after October 21, 1998, is entitled, upon reemployment, to only the rate of basic pay the employee would have received had the employee remained in the civil service. We proposed removing section 352.310 to reflect this change.

We also proposed revising section 352.309 to make clear agency responsibilities and employee entitlements, and explain action required to retain an employee's coverage under the retirement, health benefits, and group life insurance system when the employee transfers to an international organization. No other substantive changes were proposed in this section.

Employees returning from detail or transfer to an international organization are not entitled to back pay for the time they were absent from the employing agency. However, such employees are entitled to any promotions, position upgrades, or other salary increases they would have received, but for their absence, retroactive to the date such actions otherwise would have taken effect.

Comments

The Office of Personnel Management received comments from three agencies and one individual.

One agency requested that we replace the phrase ''period of consent'' used in section 352.308(d)(2), with the word ''period'' and clarify the phrase ''all appropriate civil service employment purposes'' used in section 352.311(d). We are adopting the agency's recommendation that the phrase ''period of consent'' should be replaced with the word ''period'', and have amended section 352.311(d) accordingly. The phrase ''all appropriate civil service employment purposes'' includes time in grade, tenure, service computation dates, within grade increases, etc.

Another agency suggested that OPM clarify whether individuals serving on term appointments are eligible for details or transfers to international organizations under this part. The law does not exclude individuals serving on term appointments from coverage. Therefore, individuals serving on term appointments are included under this part. However, 5 U.S.C. 3582 excludes individuals serving on temporary appointments from coverage.

An individual asked OPM to revise section 352.311(b) to include the equalization allowance. OPM cannot adopt this request because Congress repealed this provision in Public Law 105–277.

One agency recommended OPM amend section 352.314(b) by inserting ''upon return'' at the end of the sentence. We are adopting the agency's recommendation that section 352.314(b) should end with the word ''return'' and have amended that section accordingly.

OPM received comments from another Federal agency which went beyond the scope of the proposed amendments to the regulation. However, OPM agrees that further information may be helpful to agencies; therefore, we will address these comments in supplementary guidance. These comments are as follows:

- How should an agency determine the pay of an employee if the agency has a pay-for-performance system where pay is linked directly to performance?
- How does an agency make pay actions effective as if the employee were not absent?
- How does an agency evaluate an employee detailed or transferred to an international organization (IO) if the IO does not have a systematic way of evaluating the individual's performance?
- How does an agency determine effective dates for career-ladder promotions for individuals detailed or transferred to an international organization?
- When should position upgrades occur, and should an employee be downgraded upon return if the position the employee held was downgraded in the employee's absence?

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by OMB under 3206–AI19. This final regulation does not modify this approved collection.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees, Reemployment rights.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM amends 5 CFR part 352 as follows:

PART 352—REEMPLOYMENT RIGHTS

Subpart C—Detail and Transfer of Federal Employees to International Organizations

■ 1. The authority citation for part 352, subpart C, continues to read:

Authority: 5 U.S.C. 3584, E.O. 11552, 3 CFR, 1966–1970 Comp., p. 954; Section 352.313 also issued under 5 U.S.C. 7701, *et seq.*

§ 352.303 [Removed]

■ 2. Remove and reserve § 352.303.

■ 3. Revise § 352.304 to read as follows:

§ 352.304 International organizations covered.

(a) An agency may detail or transfer an employee under this subpart, without prior approval, to an organization which the Department of State has designated as an international organization.

(b) An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission only when the Department of State agrees that the organization concerned could be designated as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

■ 4. Revise § 352.305 to read as follows:

§ 352.305 Eligibility for detail.

An employee is eligible for detail to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart, except the following:

(a) A Presidential appointee (other than a postmaster, Foreign Service officer or a Foreign Service information officer), regardless of whether the appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of part 213 of this chapter.

(c) A person serving under a non-career, limited emergency, or limited term appointment in the Senior Executive Service (SES).

(d) A person serving under a temporary appointment.

■ 5. Revise § 352.306 to read as follows:

§ 352.306 Length of details.

The total length of a detail or several details combined must not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5 years allowed for details may be extended for up to an additional 3 years. A detail or combination of details and transfers must not exceed 8 years in the aggregate throughout an employee's Federal career.

■ 6. Revise § 352.308(d) to read as follows:

§ 352.308 Effecting employment by transfer.

* * * * *

(d) *Recording requirement.* The agency must furnish the employee with a leave statement, showing his or her annual and sick leave balances at the time of transfer. In addition, the notification of personnel action effecting the employee's separation for transfer must include:

(1) Identification of the international organization to which the employee is transferring,

(2) A clear statement of the period during which the employee has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and

(3) The legal and regulatory conditions for reemployment.

■ 7. Revise § 352.309 to read as follows:

§ 352.309 Retirement, health benefits, and group life insurance.

(a) *Agency action.* An employee who is transferred to an international organization with the consent of the employing agency is entitled to retain coverage for retirement, health benefits, and group life insurance purposes if he or she so chooses. The period during which coverage, rights, and benefits are retained under this paragraph, during employment with the international organization, is deemed employment by the United States. At the time an employing Federal agency consents to the transfer of an employee, the agency must advise the employee in writing of the employee's right to continue retirement, health benefits, and group life insurance coverage, as applicable, for the duration of the assignment or transfer. The notice must explain the conditions for continued coverage and the employee's obligations and responsibilities with regard to continued coverage. The notice must also explain that, if the employee elects to retain coverage, the agency will continue to make the agency contributions to the funds, and the employee's coverage will continue as long as employee payments are currently deposited in the respective funds.

(b) *Employee action.* The employee must acknowledge, in writing, receipt of the notice and state whether or not he or she wishes to retain coverage under the retirement, health benefits, and group life insurance systems or any of them by continuing the required employee payments. The employee must make a written election to retain benefits, as applicable, and make arrangements for the required employee payments. An employee who transfers to an international organization is not eligible to participate in the Thrift Savings Plan (TSP) while employed by the international organization even if he or she elects to retain Federal retirement coverage. However, upon reemployment, an employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with an international organization, and receive make-up agency contributions and lost earnings on the agency contributions, as provided under § 352.311(e).

(c) *Agency responsibility.* For retirement and group life insurance purposes, the employing agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all retirement, health benefits, and group life insurance employee payments required to be made for the purpose of protecting the rights of the employee so transferred; and for accounting for and depositing in the respective funds all agency contributions. The agency must furnish

the employee with specific information as to how, when, and where the payments are to be submitted.

(d) *Coverage.* Employee payments are considered to be currently deposited if received by the agency before, during, or within 3 months after the end of the pay period covered by the deposit. If the contributions are not currently deposited, coverage terminates on the last day of the pay period for which the required contributions were currently deposited, subject to a 31-day extension of group life insurance and health benefits coverage as provided in parts 870 and 890 of this chapter and to the conversion benefits provided in parts 870 and 890 of this chapter. Coverage so terminated may not be re-established before the employee actually enters on duty, on the first day in a pay status in an agency. However, terminated retirement, health benefits, and group life insurance coverage must be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the employee's control and the required payments were deposited at the first opportunity. Coverage under a system other than the Civil Service Retirement System must be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

§ 352.310 [Removed]

■ 8. Remove and reserve § 352.310.

■ 9. Revise § 352.311 through § 352.314 to read as follows:

§ 352.311 Reemployment.

(a) An employee who transferred to an international organization with the consent of the employing agency is entitled to be reemployed in his or her former position, or one of like seniority, status, and pay, within 30 days of applying for reemployment if the employee:

(1) Is separated, either voluntarily or involuntarily, without cause, within the term of employment with an international organization; and

(2) Applies for reemployment with the employing agency or its successor no later than 90 days after separation from the international organization.

(b) Pay upon reemployment will be set at that to which the employee would have been entitled had the employee remained with the employing agency.

(c) When an employee's reemployment right is to a position in the SES, reemployment may be to any position in the SES for which the employee is qualified. The employee must be returned at not less than the SES rate of basic pay as determined under 5 CFR part 534, subpart D, at which the employee was being paid immediately before transfer to the international organization, or if pay has been adjusted under § 352.314(c), at not less than the adjusted pay level.

(d) The period of separation caused by the employment of the employee with the international organization and the period necessary to effect reemployment are creditable service for all appropriate civil service employment purposes (e.g., tenure, service computation date, retirement, time in grade). Employees, upon return, are also entitled to restoration of any sick leave.

(e) An employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with the international organization, and receive make-up agency contributions and lost earnings on the agency contributions, consistent with applicable TSP requirements.

§ 352.312 When to apply.

An employee may apply for reemployment, in writing, either before or after separation from the international organization. If the employee applies before separation, the 30-day period prescribed in § 352.311 begins either with the date of the application or 30 days before the employee's date of separation from the international organization, whichever is later. If the employee applies for reemployment after separation, the application must be received by the employing agency no later than 90 days after separation from the international organization.

§ 352.313 Failure to reemploy and right of appeal.

(a) When an agency fails to reemploy an employee within 30 days of receiving the employee's application, it must notify the employee, in writing, of the reasons and of the employee's right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b) If the agency fails to reach and issue a decision to the employee within 30 days from the date of the application for reemployment, the employee is entitled to appeal the agency's failure to issue a decision to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) An employee may submit an appeal, alleging that the agency has failed to comply with any of the other provisions of sections 3343 and 3581–3584 of title 5, United States Code, or of this part, to the Merit Systems Protection Board under the provisions of the Board's regulations.

§ 352.314 Consideration for promotion and pay increases.

(a) The employing agency must consider an employee who is detailed or transferred to an international organization for all promotions for which the employee would be considered if not absent. A promotion based on this consideration is effective on the date it would have been effective if the employee were not absent.

(b) When the position of an employee who is absent on detail or transfer to an international organization is upgraded during the employee's absence, the employing agency must place the employee in the upgraded position upon return.

(c) The employing agency must consider an employee who is detailed or transferred to an international organization from an ungraded pay system for all pay increases for which the employee would have been considered if not absent. An increase is effective on the date it would have been effective if the employee were not absent.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 537

RIN 3206–AK51

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to revise the rules governing the authority to offer student loan repayment benefits to Federal job candidates or current Federal employees when necessary to recruit or retain highly qualified personnel. These revisions include certain policy changes and clarifications to assist agencies in the administration of the Federal student loan repayment program.

DATES: The regulations are effective December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mark Harrington by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2007, the U.S. Office of Personnel Management (OPM) published proposed regulations (72 FR 914) to revise the rules implementing 5 U.S.C. 5379, which authorizes agencies to offer student loan repayment benefits to candidates for Federal jobs or current Federal employees when necessary to recruit or retain highly qualified personnel. The primary purpose of the revision was to make part 537 more readable and usable. However, we have also made substantive changes that will improve the agencies' program administration and promote alignment between this authority and related authorities that support recruitment and retention efforts.

The 60-day comment period for the proposed regulations ended on March 12, 2007. During the comment period, OPM received comments from four Federal agencies, one union, and two individuals.

Definitions

An agency recommended we clarify the definition of *student loan repayment benefit* in § 537.102 by adding a reference to § 537.106(b), which describes student loans that qualify for repayment. We agree and have added the reference.

We also have made two additional minor revisions in the definitions section. Specifically, we have added language clarifying that the definitions in § 537.102 apply only for purposes of part 537. We also have revised the definition of *time-limited appointment* to refer to a ''non-permanent appointment'' rather than an ''appointment of temporary duration'' to ensure there is no confusion with the use of the term ''temporary'' in other regulations (*e.g.*, 5 CFR part 316, subpart D).

Comment on Authorizing Student Loan Repayment Benefits To Retain an Employee Likely To Leave for a Different Position in the Federal Service

One agency commented on proposed § 537.105(a)(2)(ii), which requires an agency to make a written determination that an employee would otherwise be likely to leave the agency for employment outside the Federal service and that it is essential to retain the employee based on the employee's high or unique qualifications or a special need of the agency before authorizing student loan repayment benefits to retain a current agency employee. The agency recommended we remove the requirement that the employee be likely to leave for employment outside the Federal service to permit agencies to offer student loan repayment benefits to retain an employee likely to leave for a different position in the Federal service. The agency noted the authorizing statute does not prohibit agencies from offering student loan repayment benefits to current employees who are likely to leave for a different position in the Federal service.

Comments on Authorizing Student Loan Repayment Benefits To Recruit an Employee From Another Federal Agency

Two agencies, one union, and one individual submitted comments in opposition to proposed § 537.105(c), which provides that an agency may not authorize student loan repayment benefits to recruit an individual from outside the agency who is currently employed in the Federal service. One agency and the union commented that it is inequitable for a newly appointed employee to be eligible for student loan repayment benefits while an employee transferring from another Federal agency is not. The agency stated this provision will make it extremely difficult for agencies to recruit for mission-critical positions from other agencies. The agency also commented that all Federal agencies compete with each other for job candidates and each agency offers different benefits and opportunities based on various factors, including budget and certain flexibilities available solely to the particular agency. The union asserted the focus should be on filling the position with the best qualified individual, with all the benefit options open to an agency, regardless of the job candidate's current position.

Response to Comments on Authorizing Student Loan Repayment Benefits To Retain an Employee Likely To Leave for a Different Position in the Federal Service or To Recruit an Employee From Another Federal Agency

Ensuring agencies have an effective civilian workforce to achieve their goals is one of the primary objectives of strategic human capital management in the Government. To meet this objective, agencies must have the necessary human resources tools to recruit and retain essential employees to perform mission-critical work. The student loan repayment authority is one of several tools providing agencies substantial flexibility to help recruit and retain key employees.

We carefully considered the comments recommending the regulations be amended to provide agencies with additional flexibility to authorize student loan repayment benefits to either retain a current employee likely to leave for a different position in the Federal service or to recruit an individual from outside the agency who is currently employed in the Federal service. In determining whether to provide additional flexibility, we must balance the workforce needs of a single agency with the workforce needs of other agencies. An employee providing valuable services to one agency also may possess the competencies that are valuable to another agency. We also need to be cautious when establishing new flexibilities that have the potential to result in costly and inefficient interagency competition.

We have not amended proposed § 537.105(a)(2)(ii) to permit agencies to authorize student loan repayment benefits to retain an employee likely to leave for a different position in the Federal service. We note that this policy was established at § 537.105(c) in OPM's original final regulations on the repayment of student loans, which were published on January 11, 2001 (66 FR 2790).

We also have not amended proposed § 537.105(c) to permit agencies to authorize student loan repayment benefits to recruit an employee from outside the agency who is currently employed in the Federal service. While not previously addressed in OPM's regulations, it has been OPM's longstanding guidance that agencies should not use the student loan repayment authority to recruit current Federal employees from other agencies.

The legislative history of 5 U.S.C. 5379 indicates Congress intended student loan repayment benefits to be a tool used to improve the Federal Government's ability to compete for top college graduates by allowing Federal agencies to repay the student loans of those individuals. (See House Report 101–402, February 7, 1990.) The student loan repayment authority is designed to be used at an agency's discretion as part of a set of flexibilities—including recruitment incentives under 5 CFR part 575, subpart A, and the superior qualifications and special needs pay-setting authority under 5 CFR 531.212—allowing agencies to tailor employment offers to the needs of individual job candidates to compete with non-Federal employers for the best and brightest

personnel. The authority is not intended to assist agencies in competing with other Federal agencies for current Federal employees.

We understand interagency competition already exists, and some agencies are disadvantaged because other agencies have the flexibility to pay higher salaries or provide other unique incentives. However, we must balance single agency needs against the Governmentwide interest of avoiding costly and inefficient interagency competition. If these regulations were to permit agencies to use student loan repayment benefits to retain current employees likely to leave for a different position in the Federal service and to recruit current employees from other agencies, they could result in student loan repayment bidding wars between the current and prospective agencies. We do not intend to discourage interagency movements, which provide certain benefits to both Federal agencies and employees. However, we do not think it is appropriate for Federal agencies to use student loan repayment benefits as a financial incentive to compete with each other for current Federal employees.

Request for Clarification Regarding Advertising a Student Loan Repayment Program and the Eligibility of Employees Who Previously Transferred From Another Federal Agency

One agency asked for clarification concerning what constitutes recruitment for the purpose of § 537.105(c). The agency would like to retain its ability to advertise its student loan repayment program and be assured that simply advertising the program will not be prohibited. In addition, the agency is concerned the new provision would adversely impact the eligibility of an employee with prior Federal work experience if he or she otherwise would be eligible to participate in the agency's student loan repayment program.

Although these final regulations prohibit agencies from authorizing student loan repayment benefits expressly to recruit an individual from outside the agency who is currently employed in the Federal service, there is no restriction prohibiting an agency from advertising its student loan repayment program as part of a general recruitment effort. In addition, the regulations do not prohibit an agency from offering student loan repayment benefits to an employee who previously transferred from another agency. In other words, an agency may not include student loan repayment benefits as part of a job offer in an effort to recruit a current Federal employee from another agency. However, if at some point after entering the new position the individual meets the agency's requirements for participation in its student loan repayment program, the agency may provide student loan repayment benefits to the employee.

Movement to a Position in a Different Geographic Location Within the Same Agency

An agency recommended we revise the regulations to address a situation in which an employee receiving student loan repayment benefits moves to a position in a different geographic location within the same agency. Specifically, the agency suggested allowing agencies to make a determination regarding whether to terminate or continue providing student loan repayment benefits when an employee moves to a position in a different geographic location within the same agency. The agency stated the agency component in the new geographic location may not have the funds to continue providing student loan repayment benefits to the employee and also may not have the same circumstances to justify providing the incentive. As provided by § 537.107(a), a written service agreement may specify any employment conditions the agency considers to be appropriate, including the individual's position and the duties he or she is expected to perform, his or her work schedule, and his or her level of performance. Also, § 537.107(f) provides that an agency may include in a service agreement specific conditions (in addition to those required by law) that trigger the loss of eligibility for student loan repayment benefits and/or a requirement that the employee reimburse the agency for student loan repayment benefits already received. (Also see §§ 537.108(a)(3) and 537.109(a)(2).) Therefore, the regulations already provide agencies with the authority to make student loan repayment benefits contingent on an employee working in a position at a certain geographic location. However, to address the agency's comment, we have amended § 537.107(a) to clarify that an agency may add language to the service agreement to make the geographic location of an employee's position a condition of receiving student loan repayment benefits.

Suitability Determinations

An agency recommended we expand on § 537.109(b)(1) to add suitability determinations and failure to complete a probationary period to the types of involuntarily separations that trigger a requirement for an employee to reimburse his or her agency for student loan repayment benefits received. We agree in part. As provided by §§ 537.107(f)(2) and 537.109(b)(1), a service agreement may not require reimbursement based on an involuntary separation for reasons other than misconduct or unacceptable performance. We have revised §§ 537.107(f)(2) and 537.109(b)(1) to also require reimbursement when an employee is separated involuntarily prior to the completion of a service agreement as a result of a negative suitability determination under 5 CFR part 731. However, we are not adding language requiring reimbursement based on an involuntary separation due to a failure to complete a probationary period because we believe such an action would be considered an involuntary separation for misconduct or unacceptable performance, which are already covered by the regulations.

Comment on Reimbursement Requirements

One agency questioned whether the provisions allowing agencies to require reimbursement for employees who are removed for poor performance or for non-suitability exceed the statutory authority granted to OPM under 5 U.S.C. 5379. We disagree, and for the reasons explained below, we are not changing our regulations in §§ 537.107(f)(2) and 537.109(b)(1).

Section 5379 provides discretionary authority for agencies to set up programs for student loan reimbursement for eligible employees. (''The head of an agency *may,* in order to recruit or retain highly qualified personnel, establish a program under which the agency *may* agree to repay'' (emphasis added). See 5 U.S.C. 5379(b)(1).) Agencies are not required to set up such programs, and employees are not entitled to benefits under the authority. Entitlement begins only after a written agreement between the agency and the employee is signed, and the student loan reimbursement is subject to ''such terms, limitations, or conditions, as may be mutually agreed to by the agency and employee concerned.'' See 5 U.S.C. 5379(b)(2). If agencies decide to offer the program, there are only three statutory limitations. First, an agency may not pay more than $10,000 per calendar year or $60,000 total in student loan repayments for an individual employee (5 U.S.C. 5379(b)(2)). Second, an agency may not reimburse an employee for repayments made by the employee before entering into an agreement with the agency (5 U.S.C. 5379(b)(3)). Third, an agency must require reimbursement if the employee

is involuntarily separated for misconduct or is voluntarily separated before the completion of the term of the agreement, (5 U.S.C. 5379(c)). In addition, agencies must follow regulations implemented by OPM under the authority of 5 U.S.C. 5379(g).

Agencies may not expand a program to provide for more benefits to employees than are authorized by statute. However, where a benefit is discretionary, agencies may set conditions, limitations, or terms on the employee's eligibility for payment of the benefit. This is explicitly stated in the statute. The phrase ''terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned'' refers to aspects of the administration of the program relating to individual payments. OPM may properly use its regulatory authority to mandate that agencies uniformly include certain terms, limitations, and conditions in service agreements. (See 5 U.S.C. 5379(g), which allows OPM to establish ''standards and requirements'' by regulation to ensure uniformity in appropriate areas.) We believe that requiring agencies to condition payment of the student loan repayment benefit on the employee's acceptance of reimbursement when involuntarily separated for performance or for non-suitability is within the letter and the spirit of the authority given under 5 U.S.C. 5379(b)(2). It is good policy to require that agencies seek reimbursement when an employee has been found unsuitable, engaged in misconduct, or failed to perform adequately. In summary, the statute does not provide entitlement, and employees are required to sign agreements with conditions only if they wish to participate in their agencies' discretionary programs.

Commissioned Corps Officers of the Public Health Service

One agency requested that OPM delegate it the authority to offer student loan repayment benefits to Commissioned Corps Officers of the Public Health Service. However, officers of the Commissioned Corps are not covered by the authorizing statute, and OPM cannot extend eligibility to Commissioned Corps officers by regulation. The statute authorizing student loan repayment benefits, 5 U.S.C. 5379, does not define ''employee.'' Therefore, the general title 5 definition of employee at 5 U.S.C. 2105 applies to the student loan repayment authority. As such, proposed § 537.102 defines *employee* as ''an employee of an agency who satisfies the definition of the term in 5 U.S.C. 2105.'' Under 5 U.S.C. 2105(a), the term ''employee'' includes officers and individuals appointed in the ''civil service.'' Section 2101(1) of title 5, United States Code, states that ''the 'civil service' consists of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services.'' Under 5 U.S.C. 2101(3), the term ''uniformed services'' includes the Commissioned Corps of the Public Health Service. Officers of the Commissioned Corps are not employees under 5 U.S.C. 2105 and thus are not covered by the student loan repayment authority in 5 U.S.C. 5379. OPM may not extend an authority by regulation to employees who are not covered by the authorizing statute.

Other Comments

An individual provided a comment generally opposing the authority for Federal agencies to repay student loans. We disagree. One of the biggest challenges for Federal agencies is attracting and retaining well-qualified, high-performing employees. We believe the student loan repayment authority is a valuable human capital management tool that enables agencies to recruit highly qualified candidates into Federal service and keep talented employees in the Federal workforce.

A union recommended the sections pertaining to benefit caps and employee eligibility be looked at with an eye towards increasing the maximum total student loan repayment benefit. The union noted student loan debt burdens are continuously increasing and requested that wherever possible, efforts be made to give agencies the option of offering greater benefits to recruit and retain excellent employees. Under 5 U.S.C. 5379(b)(2), an agency may provide student loan repayment benefits of up to $10,000 for an employee in any calendar year up to an aggregate total of $60,000 for any one employee. An increase in the annual or aggregate limits on student loan repayment benefits would require a statutory amendment. We note that the Federal Employee Student Loan Assistance Act (Pub. L. 108–123, November 11, 2003) increased the maximum amounts Federal agencies are authorized to repay under the Federal student loan repayment program from $6,000 to $10,000 per employee in any calendar year and from $40,000 to a total of $60,000 for any one employee. On April 20, 2004, OPM published a final rule (69 FR 21039) to revise § 537.106(c) in accordance with the statutory amendment.

An agency recommended expanding on § 537.106(a)(4) to emphasize that an agency should not begin making loan payments prior to the time the employee starts work under any circumstances. We have not made this recommended change because we believe the paragraph is sufficiently clear that although an agency and a job candidate may sign a service agreement before the job candidate begins serving in the position, the agency may not begin making loan payments until the job candidate actually begins serving in the position. However, we are adding a reference to § 537.107, which contains the regulations regarding service agreements.

An agency suggested that in order to differentiate between paragraphs (1) and (2) of 5 CFR 537.107(d), paragraph (1) should be revised to read as follows: ''Earlier than the date the service agreement is signed, *for individuals who are current employees*'' (emphasis added). We do not believe this change is necessary. Because we have written the phrase in the negative and use the conjunction ''or'' between paragraphs (1) and (2), both conditions must be met.

An agency suggested that even though 5 U.S.C. 5379(c)(2) allows agencies to waive the reimbursement of student loan repayments already made by an agency if the employee enters into the service of another agency, OPM should consider making such reimbursement a requirement. We disagree and are not changing 5 CFR 537.107(e). We believe that agencies should be allowed to make their own decisions regarding the granting of a waiver of recovery of already paid benefits.

Finally, an agency points out that under 5 CFR 537.110(a), records kept under the Program may be destroyed when 3 years have elapsed since the end of the service period, but that a longer record retention period may be necessary where potential litigation is involved (*i.e.*, if there has been a default of the service agreement and the agency engages in debt collection). We agree and are making the necessary changes to that section.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 537

Administrative practice and procedure, Government employees, Students, Wages.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM is revising 5 CFR part 537 to read as follows:

PART 537—REPAYMENT OF STUDENT LOANS

Sec.

537.101 Purpose.
537.102 Definitions.
537.103 Agency student loan repayment plans.
537.104 Employee eligibility.
537.105 Criteria for payment.
537.106 Conditions and procedures for providing student loan repayment benefits.
537.107 Service agreements.
537.108 Loss of eligibility for student loan repayment benefits.
537.109 Employee reimbursements to the Government.
537.110 Records and reports.

Authority: 5 U.S.C. 5379(g).

§ 537.101 Purpose.

This part implements 5 U.S.C. 5379, which authorizes agencies to establish a student loan repayment program for the purpose of recruiting or retaining highly qualified personnel. Under such a program, an agency may agree to repay (by direct payment to the loan holder on behalf of the employee) all or part of any outstanding qualifying student loan or loans previously taken out by a job candidate to whom an offer of employment has been made, or by a current employee of the agency.

§ 537.102 Definitions.

The definitions in this section apply only to part 537. In this part:

Agency has the meaning given that term in subparagraphs (A) through (E) of 5 U.S.C. 4101(1).

Authorized agency official means the head of an Executive agency or an official who is authorized to act for the head of the agency in the matter concerned.

Employee means an employee of an agency who satisfies the definition of the term in 5 U.S.C. 2105.

Loan payment means the net payment made by an agency to the holder of a student loan (after deducting any tax withholdings that may be made from the gross student loan repayment benefit credited to the employee).

Service agreement means a written agreement between an agency and an employee (or job candidate) under which the employee (or job candidate) agrees to a specified period of service in exchange for student loan repayment benefits, subject to the conditions set forth under this part.

Student loan means—

(1) A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; or

(2) A health education assistance loan made or insured under part A of title VII of the Public Health Service Act or under part E of title VIII of that Act.

Student loan repayment benefit means the benefit provided to an employee under this part in which an agency repays (by a direct payment on behalf of the employee) a qualifying student loan as described in § 537.106(b) previously taken out by such employee. The dollar value of this benefit is the gross amount credited to the employee at the time of a loan payment to the holder of the student loan, before deducting any employee tax withholdings from that gross amount as described in § 537.106(a)(6)(iii). A student loan repayment benefit is not considered basic pay for any purpose.

Time-limited appointment means a non-permanent appointment including—

(1) A temporary appointment under 5 CFR part 316, subpart D, or similar authority;

(2) A term appointment under 5 CFR part 316, subpart C, or similar authority;

(3) An overseas limited appointment with a time limitation under 5 CFR part 301, subpart B;

(4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes;

(5) A Veterans Recruitment Appointment under 5 CFR part 307;

(6) A Presidential Management Fellow appointment under 5 CFR 213.3102(ii) and 5 CFR 213.3102(jj);

(7) A Federal Career Intern appointment under 5 CFR 213.3202(o); and

(8) An appointment under the fellowship and similar programs authority at 5 CFR 213.3102(r).

§ 537.103 Agency student loan repayment plans.

Before providing student loan repayment benefits under this part, an agency must establish a student loan repayment plan. This plan must include the following elements:

(a) The designation of officials with authority to review and approve offering student loan repayment benefits (which may parallel the approval delegations used for other recruitment, relocation, and retention incentives);

(b) The situations in which the student loan repayment authority may be used;

(c) The criteria to meet or consider in authorizing student loan repayment benefits, including criteria for determining the size and timing of the loan payment(s);

(d) A system for selecting employees (or job candidates) to receive student loan repayment benefits that ensures fair and equitable treatment;

(e) The requirements associated with service agreements (including a basis for determining the length of service to be required if it is greater than the statutory minimum);

(f) The procedures for making loan payments;

(g) The provisions for recovering any amount outstanding from an employee who fails to satisfy a service agreement and conditions for waiving an employee's obligation to reimburse the agency for payments made under this part; and

(h) Documentation and recordkeeping requirements sufficient to allow reconstruction of each action to approve a student loan repayment benefit.

§ 537.104 Employee eligibility.

(a) Subject to the conditions in 5 U.S.C. 5379 and this part, an authorized agency official may approve student loan repayment benefits to recruit a highly qualified job candidate or retain a highly qualified employee who, during the service period established under a service agreement (consistent with § 537.107), will be serving under—

(1) An appointment other than a time-limited appointment; or

(2) A time-limited appointment if—

(i) The employee (or job candidate) will have at least 3 years remaining under the appointment after the beginning of the service period established under a service agreement; or

(ii) The time-limited appointment authority leads to conversion to another appointment of sufficient duration so that his or her employment with the agency is projected to last for at least 3 additional years after the beginning of the service period established under a service agreement.

(b) An employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character is ineligible for student loan repayment benefits.

(c) An employee becomes ineligible for student loan repayment benefits under the conditions described in § 537.108.

§ 537.105 Criteria for payment.

(a) *General criteria.* Before authorizing student loan repayment benefits for an employee (or job candidate), an agency must make a written determination that—

(1) The employee (or job candidate) is highly qualified and otherwise eligible (as described in § 537.104); and

(2)(i) In a case where the authorization is granted to recruit a job candidate to fill an agency position, the agency otherwise would encounter difficulty in filling a position with a highly qualified individual; or

(ii) In a case where the authorization is granted to retain a current employee of the agency, the employee otherwise is likely to leave the agency for employment outside the Federal service and it is essential to retain the employee based on the employee's high or unique qualifications or a special need of the agency.

(b) *Retention considerations.* In making a determination under paragraph (a)(2)(ii) of this section, an agency must consider the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to its mission.

(c) *Current Federal employees.* An agency may not authorize student loan repayment benefits to recruit an individual from outside the agency who is currently employed in the Federal service.

(d) *Selecting employees.* When selecting employees (or job candidates) to receive student loan repayment benefits, agencies must ensure that benefits are awarded without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition.

§ 537.106 Conditions and procedures for providing student loan repayment benefits.

(a) *General conditions.* (1) Student loan repayment benefits may be provided at the discretion of the agency and are subject to such terms, limitations, or conditions as may be mutually agreed to in writing by the agency and the employee (or job candidate) as part of a service agreement under § 537.107.

(2) The student loan to be repaid must be a qualifying student loan as set forth in paragraph (b) of this section.

(3) The agency must document in writing each approval of student loan repayment benefits. An authorized agency official must review and approve each written determination. The written determination must show the employee (or job candidate) meets the criteria specified in § 537.105.

(4) An authorized agency official must approve student loan repayment benefits in connection with a recruitment action before the job candidate actually enters on duty in the position for which he or she was recruited. The agency and the job candidate may sign the service agreement consistent with § 537.107 before the job candidate begins serving in the position, but the agency may not begin making loan payments until the job candidate begins serving in the position.

(5) Student loan repayment benefits are in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(6) Appropriate tax withholdings must be deducted or applied at the time any payment is made. Since these tax implications could create a financial hardship for the recipient of the student loan repayment benefit, agencies may lessen the impact of tax withholdings on an employee's paycheck in one of the following ways:

(i) Make smaller payments at periodic intervals throughout the year, rather than issue payments under this part in one lump sum;

(ii) Allow the employee to write a check to the agency to cover his or her tax liability, rather than have the tax liability withheld from the employee's paycheck;

(iii) Deduct the amount of taxes to be withheld from the student loan repayment benefit before the balance is issued as a loan payment to the holder of the loan.

Note to § 537.106(a)(6): Contact the Internal Revenue Service for further details concerning these options, as well as the tax withholding implications of payments under this part.

(b) *Qualifying student loans.* (1) The agency may make loan payments only for student loan debts that are outstanding at the time the agency and the employee (or job candidate) enter into a service agreement. Before authorizing loan payments, an agency must verify with the holder of the loan that the employee (or job candidate) has an outstanding student loan that qualifies for repayment under this part. The agency must verify remaining balances to ensure that loans are not overpaid.

(2) The agency may repay more than one loan if the employee's student loan repayment benefit does not exceed the limits set forth in paragraph (c) of this section.

(3) These regulations do not impose a limit on the age of a student loan for qualification purposes. The agency may, however, specify in its agency plan that only student loans made within a certain timeframe are eligible for repayment.

(c) *Benefit amount.* (1) In determining the amount of student loan repayment benefits to approve, an agency must consider the employee's (or job candidate's) value to the agency and how far in advance the agency is permitted to commit funds. If an agency decides to make additional student loan repayment benefits contingent on budget levels or other factors, it must address these contingent benefits in the written service agreement as described in § 537.107(a).

(2) The amount of student loan repayment benefits provided by an agency is subject to both of the following limits:

(i) $10,000 per employee per calendar year; and

(ii) A total of $60,000 per employee.

(3) In applying the limits in paragraph (c)(2) of this section, the agency must count the full student loan repayment benefit (*i.e.*, before deducting any tax withholdings as described in paragraph (a)(6)(iii) of this section).

(d) *Employee responsibility.* Loan payments made by an agency under this part do not exempt an employee from his or her responsibility and/or liability for any loan(s) the individual has taken out. The employee also is responsible for any income tax obligations resulting from the student loan repayment benefit.

§ 537.107 Service agreements.

(a) Before an employing agency makes any loan payments for an employee, the employee (or job candidate) must sign a written service agreement to complete a specified period of service with the agency and to reimburse the agency for the student loan repayment benefit when required by § 537.109. The service agreement also may specify any other employment conditions the agency considers to be appropriate, including the employee's (or job candidate's) position and the duties he or she is expected to perform, his or her work schedule, his or her level of performance, and the geographic location of his or her position. (See §§ 537.108 and 537.109.) The service agreement may address the possibility that, during the period the agreement is in effect, the agency may modify the agreement to provide student loan repayment benefits in addition to those fixed in the agreement based on contingencies or conditions specified in the agreement.

(b) The minimum period of service to be established under a service

agreement is 3 years, regardless of the amount of student loan repayment benefits authorized. The agency and the employee may mutually agree to modify an existing service agreement, subject to the limitations at § 537.106(c)(2), to provide additional student loan repayment benefits for additional service without the need for an entirely new service agreement (which would require a new 3-year minimum service period). Periods of leave without pay, or other periods during which the employee is not in a pay status, do not count toward completion of the required service period. Thus, the service completion date must be extended by the total amount of time spent in non-pay status. However, as provided by 5 CFR 353.107, absence because of uniformed service or compensable injury is considered creditable toward the required service period upon reemployment.

(c) A service agreement made under this part in no way constitutes a promise of, or right or entitlement to, appointment, continued employment, or noncompetitive conversion to the competitive service. This condition should be stated in the service agreement.

(d) The service period begins on the date specified in the service agreement. That beginning date may not be—

(1) Earlier than the date the service agreement is signed; or

(2) Earlier than the date the individual begins serving in the position for which he or she was recruited (when student loan repayment benefits are approved to recruit a job candidate to fill an agency position).

(e) The service agreement must contain a provision addressing whether the individual would be required to reimburse the paying agency for student loan repayment benefits if he or she voluntarily separates from the paying agency to work for another agency before the end of the service period. (See § 537.109(b)(2).)

(f) The agency may include in a service agreement specific conditions (in addition to those required by law) that trigger the loss of eligibility for student loan repayment benefits and/or a requirement that the employee reimburse the agency for student loan repayment benefits already received. (See §§ 537.108(a)(3) and 537.109(a)(2).) However, a service agreement may not require reimbursement based on—

(1) An employee's failure to maintain performance at a particular level (unless the employee is separated based on unacceptable performance); or

(2) An involuntary separation for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731 (*e.g.*, an involuntary separation resulting from a reduction in force or medical reasons).

§ 537.108 Loss of eligibility for student loan repayment benefits.

(a) An employee receiving student loan repayment benefits from an agency is ineligible for continued benefits from that agency if the employee—

(1) Separates from the agency;

(2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the agency; or

(3) Violates a condition in the service agreement, if the agreement specifically provides that eligibility is lost when the condition is violated.

(b) For the purpose of applying paragraph (a)(2) of this section, an acceptable level of performance is one that is equivalent to level 3 (''Fully Successful'' or equivalent) or higher, as described in 5 CFR 430.208(d). An employee loses eligibility for student loan repayment benefits if his or her most recent official performance evaluation does not meet this requirement.

§ 537.109 Employee reimbursements to the Government.

(a) An employee is indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits received under a service agreement if he or she—

(1) Fails to complete the period of service required in the applicable service agreement (except as provided by paragraph (b) of this section); or

(2) Violates any other condition that specifically triggers a reimbursement requirement under the agreement.

(b) An agency may not apply paragraph (a) of this section based on an employee's failure to complete the required period of service established under a service agreement if—

(1) The employee is involuntarily separated for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731; or

(2) The employee leaves the paying agency voluntarily to enter into the service of any other agency, unless reimbursement to the agency is otherwise required in the service agreement, as provided by § 537.107(e).

(c) If an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (as provided by § 537.107(b)), the modified service agreement may stipulate that, if the employee completes the initial service period but fails to complete the additional service period, he or she is required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period.

(d) If an employee fails to reimburse the paying agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding is recoverable from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

(e) An authorized agency official may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest. (See 5 U.S.C. 5379(c)(3).)

(f) Any amount reimbursed by, or recovered from, an employee under this section must be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited must be merged with other sums in such account and must be available for the same purposes and time period, and subject to the same limitations (if any), as the sums with which merged. (See 5 U.S.C. 5379(c)(4).)

§ 537.110 Records and reports.

(a) Each agency must keep a record of each determination to provide student loan repayment benefits under this part and make such records available for review upon request by OPM. Such a record may be destroyed when 3 years have elapsed since the end of the service period specified in the employee's service agreement unless any dispute has arisen regarding the agreement. If the service agreement has not been fulfilled, there are other disputes regarding the agreement or the loan payouts, or the agreement has become the subject of litigation, the records should be kept until the agency is notified by agency counsel that all pending claims have been resolved, all litigation concluded, and any applicable periods for seeking further review has elapsed and, in any event, for a minimum of 6 years from the date the facts giving rise to the dispute occurred. If debt collection is pursued against the employee for repayments made by the agency, the agency must keep the records until the agency is notified by agency counsel that the debt is fully

collected, compromised, or settled finally and that any applicable period for seeking further review has elapsed.

(b) By March 31st of each year, each agency must submit a written report to OPM containing information about student loan repayment benefits it provided to employees during the previous calendar year. Each report must include the following information:

(1) The number of employees who received student loan repayment benefits;

(2) The job classifications of the employees who received student loan repayment benefits; and

(3) The cost to the Federal Government of providing student loan repayment benefits.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1140 and 1145

[Docket No. AMS–DA–08–0031; DA–08–05]

RIN 0581–AC86

Dairy Forward Pricing Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a program for producers and cooperative associations of producers to voluntarily enter into forward price contracts with handlers for milk used for Class II, III, or IV purposes under the Agricultural Marketing Agreement Act of 1937 (AMAA). The program allows handlers regulated under the Federal milk marketing order program to pay producers and cooperative associations in accordance with the terms of a forward contract and not have to pay the minimum Federal order blend price for milk. This program is established in accordance with section 1502 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill).

DATES: *Effective Date:* November 3, 2008.

FOR FURTHER INFORMATION CONTACT: John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229–Room 2753, 1400 Independence Ave., SW., Washington, DC 20250–0229, (202) 720–4664, e-mail address: *john.mengel@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule implements a program for producers and cooperative associations of producers to enter into forward price contracts with handlers for Class II, III, or IV milk under the AMAA. This program is required to be established by the 2008 Farm Bill. The program authorizes that under the AMAA, milk handlers pay producers or cooperative associations of producers a negotiated price, rather than the Federal order minimum blend price for producer milk if subject to conditions and terms of a forward contract, provided the volume of such milk does not exceed the handler's Class II, III, and IV utilization for the month on the order that regulates the milk. The program applies to producer milk regulated under Federal milk marketing orders that is not classified as Class I milk or milk otherwise intended for fluid use and that is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce of Federally regulated milk. The Federal milk marketing order program consists of 10 Federal milk marketing orders (7 CFR 1001–1135). In accordance with the 2008 Farm Bill, the program prohibits forward contracts under the program from being entered into after September 30, 2012, and no forward contracts entered into under the program may extend beyond September 30, 2015.

Background

The Consolidated Appropriations Act of 2000 amended the Agricultural Marketing Agreement Act of 1937 [1] to mandate the implementation of a Dairy Forward Pricing Pilot Program (DFPPP) through December 31, 2004. The law allowed proprietary handlers, and cooperative associations acting as milk handlers with respect to non-member milk, regulated under the Federal milk marketing order program to forward contract for deliveries of milk from producers or cooperative associations of producers at prices exempt from minimum Federal milk marketing order blend prices.[2] The 2000 Act required that the Department conduct a study on the DFPPP to be submitted to Congress concerning impacts on milk prices paid to producers.[3] The study, covering the period from September 2000 to March 2002, indicated that participation in the DFPPP was relatively small in terms of numbers of producers, handlers, and milk quantities. On a monthly average basis, 3.9 percent of eligible producers, 5.7 percent of proprietary manufacturing plants, and 5.3 percent of pooled milk received from eligible producers participated. The study concluded the DFPPP to be effective in reducing price volatility. The average monthly price received for contract milk was $14.02, ranging from a low of $13.23 to a high of $14.86. The average monthly price of the same milk, had it not been under contract, was $14.51, ranging from a low of $12.04 to a high of $17.75. Thus, the study concluded that price volatility was substantially reduced for producers and handlers that participated in the Program. Subsequent reports published by the Department, covering the entire period of the Program from September 2000 through December 2004, indicated results that were consistent with conclusions of the report submitted to Congress. The study and the final report on the DFPPP can be found at *http://www.ams.usda.gov/dairy*.

This Final Rule removes the regulations covering the DFPPP that appeared in 7 CFR Part 1140, (7 U.S.C. 601 *et seq.*; as amended by section 1001(a)(8) of Public Law 106–113) and establishes a new 7 CFR Part 1145, as mandated by the 2008 Farm Bill.

The program does not invalidate, supersede, or otherwise change any existing contractual agreements between handlers and producers. Contracts eligible under this program are those contracts beginning no earlier than the effective date of this final rule.

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The adopted amendments do not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provisions of this rule.

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[1] Section 23 of the Agricultural Adjustment Act (7 U.S.C. 601 *et seq.*), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, as enacted by Public Law 106–113 (113 Stat. 1501A–519).

[2] See Final Rule for Dairy Forward Pricing Pilot Program, July 18, 2000; 65 FR 44408; 7 CFR Part 1140.

[3] See *A Study of the Dairy Forward Pricing Pilot Program and Its Effect on Prices Paid to Producers for Milk,* October 31, 2002. Prepared for the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture; *http://www.ams.usda.gov/dairy*.

Regulatory Flexibility Act and Paperwork Reduction Act

The legal basis for this rule is set forth in the 2008 Farm Bill, which directs the Secretary of USDA to establish a dairy forward pricing program. The 2008 Farm Bill directs USDA to establish a program under which milk producers and cooperative associations of producers are authorized to enter voluntarily into forward price contracts with milk handlers.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Based on information available from March 2008, the milk of 47,850 dairy farmers was pooled on the Federal milk marketing order system. Of the total, 44,979 dairy farmers, or 94 percent, were considered small businesses. During the same month, 317 handler plants were regulated by or reported their milk receipts to be pooled and priced on a Federal milk marketing order. Of the total, approximately 168 handler plants, or 53 percent, were considered small businesses.

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

The reporting and recordkeeping requirements for this rule are minimal. Section 1601 of the 2008 Farm Bill provides that the promulgation of the regulations to establish a Dairy Forward Pricing Program shall be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Although exempted, the requirements of the Paperwork Reduction Act were considered in developing the provisions of this rule. The provisions implementing the Dairy Forward Pricing Program have been carefully reviewed and every effort has been made to minimize recordkeeping costs or requirements.

Any handler that enters into a forward contract with a producer or cooperative association of producers must have written proof of such an arrangement. To meet other requirements for participation in this program, a handler must submit a copy of each forward contract with a producer or cooperative association of producers to the market administrator of the order which regulates the milk. Submitting this information to the milk market administrator is estimated to take five minutes or less. The handler must attach a disclosure statement to each forward contract, or otherwise make such statement part of the contract. The disclosure statement must be signed by each producer or cooperative representative entering into a forward contract. The disclosure statement explains that producers or cooperative associations of producers entering into forward contracts forfeit their rights to receive the minimum order price(s) for that portion of their milk that is subject to the contract for the duration of the contract period. Preparing the contract and attaching or including the disclosure statement is estimated to take twenty minutes or less per contract.

Any handler participating in the program will continue to file all of the reports that are required under the applicable Federal milk marketing order, as authorized under the Agricultural Marketing Agreement Act of 1937. The information collection requirements contained in the Federal milk marketing order program have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and have been assigned OMB Control Number 0581–0032. This includes reports of utilization of milk and monthly payroll reports that show information required by the orders. Taking into account the Dairy Forward Pricing Program, the monthly payroll report of each participating handler and the support statement sent from each participating handler to each participating producer must contain detailed accounting that distinguishes total rates used in making payment and volumes for milk under forward contract. While the resulting changes in burden are exempt from the Paperwork Reduction Act, slight modifications to the currently approved ''Handler's Report for Producer Payroll'' form will be submitted to the OMB.

If a handler's contract milk exceeds the handler's eligible milk for any month in which the specified contract price(s) are below the order's minimum prices, the handler must designate which producer milk shall not be contract milk. Preparing this notification is estimated to take five minutes or less. If the handler does not designate the suppliers of the over-contracted milk, the market administrator shall prorate the over-contracted milk to each producer and cooperative association having a forward contract with the handler.

The primary sources of data used to complete these reports are routinely used in most business transactions. The additional reporting requirements required by this rule typically only require a minimal amount of data processing time, and the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

USDA does not expect the forward contracting program to unduly burden small entities or impair their ability to compete in the marketplace. In its simplest form, a forward contract between a milk buyer and a milk producer (or cooperative) is an agreement to sell a stated quantity of milk for a specified period at a stated price. Producers and handler are able to ''lock-in'' prices, thereby minimizing risks associated with price and income volatility and enhancing their ability to obtain new or continued financing. By providing another tool to possibly reduce price risk, the program may aid small businesses in competing with larger entities that currently utilize futures and options markets, among other means, to reduce price volatility.

As previously discussed, the analysis of the DFPPP found the Program to substantially reduce price volatility for those producers who used the Program throughout the duration. The study concluded that participation in the DFPPP was small in terms of numbers of producers, handlers, and milk quantities. On a monthly average basis, 3.9 percent of eligible producers, 5.7 percent of proprietary manufacturing plants and 5.3 percent of pooled milk received from eligible producers

participated. The study concluded the DFPPP to be effective in reducing price volatility. The average monthly price received for contract milk was $14.02, ranging from a low of $13.23 to a high of $14.86. The average monthly price of the same milk, had it not been under contract, was $14.51, ranging from a low of $12.04 to a high of $17.75.

Discussion of Rules Applicable to Program

Section 1502 of the 2008 Farm Bill requires the Secretary of Agriculture to establish a dairy forward pricing program. This section provides that a handler may forward contract for an amount of milk up to the volume of Class II, III, and IV milk pooled on the order by the handler under the AMAA, as amended, during a month and be exempt from the minimum Federal order blend price provisions for that milk. USDA, including Market Administrator personnel, does not determine the terms of forward contracts or enforce negotiated prices.

For producers who consider forward contracting as a risk-management tool, the ''benchmark'' price for milk is the Federal order blend price that they would receive in the absence of a forward contract. It is reasonable to expect a producer to negotiate a forward contract that would approximate the minimum blend price plus applicable premiums averaged over the forward contract period. Over time, it is reasonable to expect to see forward contract prices paid to producers below the applicable minimum order blend price in some months and above the minimum order blend price in others.

Participation in the dairy forward pricing program is voluntary for dairy farmers, dairy farmer cooperatives, and handlers. Handlers may not require producer participation in a forward pricing program as a condition for accepting milk. A producer or cooperative association may continue to have its milk priced under the minimum payment provisions of the applicable milk order.

Producer milk under forward contract with a handler is exempt from the minimum blend price requirements offered through Federal milk orders provided the volume of such milk does not exceed the handler's Class II, III, and IV utilization for the month on the order which regulates the milk.

Any ''handler'' defined in 7 CFR 1000.9 is eligible to enter into a forward contract(s) with producers or cooperatives of producers. As defined in that section, ''handler'' includes not only the operator of a pool plant or nonpool plant, but also a broker serving as a handler as provided in § 1000.9(b), a proprietary handler, and a cooperative association acting as a handler with respect to non-member milk delivered to a pool plant or diverted to a nonpool plant. Nothing in this regulation affects any contractual arrangements between a cooperative association and its members.

A handler's combined Class II, III, and IV producer milk utilization is defined in 7 CFR 1145 as the handler's ''eligible milk.'' In the case of a multi-plant handler, the handler's Class II, III, and IV producer milk utilization will be combined together for all of the handler's milk regulated under one milk marketing order. A handler will only be exempt from paying the milk marketing order's minimum blend price on its volume of ''eligible milk.'' If a handler enters into forward contracts for more than the eligible milk volume, (''over-contract'' milk) the handler must notify the Market Administrator. If the handler fails to notify the Market Administrator of payment adjustments, the Market Administrator will prorate the over-contract milk to each producer and cooperative association having a contract with the handler.

Although handlers participating in the program will not be required to pay producers and cooperative associations the minimum uniform blend or component prices for contract milk, they must continue to account to the pool for all milk they receive at the respective milk marketing order's minimum class prices. In the case of milk received by a transfer from a cooperative association's pool plant, a handler may forward contract for all such transferred milk that is not used in Class I.

In many milk markets nonpool plants regularly receive pooled milk from milk producers who are not members of a cooperative association. This milk is actually pooled by a pool plant operator or by a cooperative association through its deliveries to a pool plant. The non-member milk delivered to a nonpool plant is reported under the milk marketing order program as producer milk diverted to a nonpool plant by the cooperative association on its monthly report of receipts and utilization to the milk market administrator. Alternatively, if a cooperative association is not involved in the transaction, such milk could be reported by a pool plant operator on its monthly report of receipts and utilization.

Many nonpool plant operators who receive non-member milk that is pooled through another handler issue checks to the nonpool plant's non-member producers. They submit their payrolls showing these payments to the market administrator. Nevertheless, these nonpool plant operators are not responsible under the milk marketing order program for paying their non-member producers the minimum Federal milk marketing order price; it is the handler (either the cooperative association or pool plant operator) that pools the milk for such nonpool plants that is responsible for an underpayment under the milk marketing order program.

Accordingly, only producer milk that is subject to forward contracting with a handler in compliance with the Dairy Forward Pricing Program will be exempt from the order's minimum blend price provisions. In the case of non-member milk that is reported as producer milk by a cooperative association handler or pool plant operator, but payrolled by a nonpool plant operator, the cooperative association or pool plant operator, respectively, will be responsible for any underpayment to a nonmember producer in the event that milk under contract becomes subject to minimum milk marketing order pricing (as in the case of over-contract milk). In this way, cooperative association handlers, pool plant operators, and nonpool plant operators may continue the arrangements that have evolved to pool milk under the Federal milk marketing order program and all will be permitted to participate in the forward contracting program.

Any handler participating in the program will continue to file all of the reports that are required under the applicable Federal milk marketing order. This includes reports of receipts and utilization of milk and monthly payroll reports that show all information required by the orders. The notable differences, however, between the forward pricing program implemented in this Final Rule and the DFPPP are that handlers participating in the forward pricing program must now provide more detailed accounting in their monthly payroll reports to the market administrator and remittance information provided to participating producers (7 CFR 1__.31, 1001.73(e), 1005.73(e), 1006.73(e), 1007.73(e), 1030.73(f), 1032.73(f), 1033.73(e), 1124.73(f), 1126.73(e), 1131.73(e)). In accordance with these provisions, the monthly payroll reports of participating handlers will be required to contain detailed accounting that distinguishes gross values paid for applicable volumes of contract versus non-contract milk for each producer. Handlers participating in the DFPPP were not required to provide such detailed accounting to the market administrator. Remittance information

from participating handlers to participating producers must clearly distinguish gross values and volumes for contract versus non-contract milk. These distinctions avoid any questions concerning compliance with Federal order minimum price requirements for participant milk not under contract.

As with the DFPPP, handlers participating in the Federal order program must submit to the market administrator a copy of each contract for which it claims exemption from the order's minimum blend pricing provisions. The contract must denote the pricing terms for contract milk. The contract must be signed prior to the first day of the first month for which the contract applies and must be received by the market administrator by the 15th day of that month. For the first month that the program is effective, contracts must be signed on or after the day on which the program becomes effective. For example, if the program becomes effective on November 15, contracts for December milk must be signed between November 15 and November 30, and copies must be received by the market administrator by December 15.

Each handler must give each contracting dairy farmer or cooperative association a disclosure statement informing them of the nature of the program and providing certain information that should be considered before entering into a forward contract. It is important that producers clearly understand on what basis they are being paid for contract milk. The disclosure statement must be signed on the same date as the contract by the dairy farmer or cooperative association representative and will have to be returned by the handler to the market administrator together with the contract. The disclosure is less than one page long and can easily be incorporated into the body of the forward contract itself or can be handled as a supplement that may be attached to the forward contract. Any contract that is submitted to the market administrator without the disclosure statement will be considered to be invalid for the purpose of being exempt from the order's minimum pricing and will be returned to the handler.

Producers who are not members of a cooperative association should be aware that their milk weights and tests will continue to be handled in the same way by the milk market administrator even if they choose to enter into a forward contract which prices their milk on a different basis than the milk marketing order in which their milk is pooled. For example, if a producer in the Appalachian order, which prices the milk of dairy farmers on the basis of skim milk and butterfat, enters into a contract that prices milk on the basis of protein, butterfat, other solids and somatic cell count, the producer will only receive data from the milk market administrator on the skim and butterfat components to compare against the buying handler's test data. If the producer wants to verify other component tests, they must do so at their own expense.

Handlers with forward contracts remain subject to all other milk marketing order provisions. Payments specified under a forward contract must be made on the same dates as order payments which they replace. If handlers paid producers under contract at different times than producers not under contract, disorderly conditions might occur. Payments for milk covered under forward contract are required to be made by the dates specified in § 1145.2(e) of the regulations.

Final Action

In accordance with the 2008 Farm Bill, this final rule establishes the dairy forward pricing program. These provisions are included in a new part 1145, which provides separate sections for Definitions, Rules Governing Forward Contracts and Enforcement of the program.

Subtitle F of Title I of the 2008 Farm Bill at section 1601 provides for an implementation timeframe and the promulgation of the regulations to establish a Dairy Forward Pricing Program without regard to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804), and the notice and comment provisions of section 553 of Title 5, United States Code. Accordingly, these provisions are made final in this action and for the same reasons good cause exists for making this rule effective one day after publication in the **Federal Register**. To do otherwise would be impracticable, unnecessary, and contrary to the public interest. (5 U.S.C. 553; 5 U.S.C. 808)

List of Subjects

7 CFR Part 1140

Contract, Forward contract, Forward pricing, Milk.

7 CFR Part 1145

Contract, Forward contract, Forward pricing, Milk.

■ For the reasons set forth in the preamble and under the authority of 7 U.S.C. 601 *et seq.*, Title 7, chapter X of the Code of Federal Regulations is amended by removing a reserving part 1140 and adding a new part 1145 to read as follows:

PART 1140—[REMOVED AND RESERVED]

PART 1145—DAIRY FORWARD PRICING PROGRAM

Subpart A—Definitions

Sec.
1145. 1 Definitions.

Subpart B—Program Rules

1145.2 Program.

Subpart C—Enforcement

1145.3 Enforcement.

Authority: 7 U.S.C. 8772.

Subpart A—Definitions

§ 1145.1 Definitions.

(a) *Program* means the dairy forward pricing program as established by Section 1502 of Public Law No. 110–246.

(b) *Eligible milk* means the quantity of milk equal to the contracting handler's Class II, III and IV utilization of producer milk, in product pounds, during the month, combining all plants of a single handler regulated under the same Federal milk marketing order.

(c) *Forward contract* means an agreement covering the terms and conditions for the sale of Class II, III or IV milk from a producer defined in 7 CFR 1001.12, 1005.12, 1006.12, 1007.12, 1030.12, 1032.12, 1033.12, 1124.12, 1126.12, 1131.12 or a cooperative association of producers defined in 7 CFR 1000.18, and a handler defined in 7 CFR 1000.9.

(d) *Contract milk* means the producer milk regulated under a Federal milk marketing order covered by a forward contract.

(e) *Disclosure statement* means the following statement which must be signed by each producer or cooperative representative entering into a forward contract with a handler before the Federal milk marketing order administrator will recognize the contract as satisfying the provisions of this program.

Attachment to § 1145.1, paragraph (e):

Disclosure Statement

I am voluntarily entering into a forward contract with [insert handler's name]. I have been given a copy of the contract. By signing this form, I understand that I am forfeiting my right to receive the Federal milk marketing order's minimum prices for that portion of the milk which is under contract for the duration of the contract. I also

understand that this contract milk will be priced in accordance with the terms and conditions of the contract.

Printed Name: _____
Signature: _____
Date: _____
Address: _____
Producer Number: _____

(f) *Other definitions.* The definition of any term in Parts 1000–1131 of this chapter apply to, and are hereby made a part of this part, as appropriate.

Subpart B—Program Rules

§ 1145.2 Program.

(a) Any handler defined in 7 CFR 1000.9 may enter into forward contracts with producers or cooperative associations of producers for the handler's eligible volume of milk. Milk under forward contract in compliance with the provisions of this part will be exempt from the minimum payment provisions that would apply to such milk pursuant to 7 CFR 1001.73, 1005.73, 1006.73, 1007.73, 1030.73, 1032.73, 1033.73, 1124.73, 1126.73 and 1131.73 for the period of time covered by the contract.

(b) No forward price contract may be entered into under the program after September 30, 2012, and no forward contract entered into under the program may extend beyond September 30, 2015.

(c) Forward contracts must be signed and dated by the contracting handler and producer (or cooperative association) prior to the 1st day of the 1st month for which they are to be effective and must be received by the Federal milk market administrator by the 15th day of that month. The disclosure statement must be signed on the same date as the contract by each producer entering into a forward contract, and this signed disclosure statement must be attached to or otherwise included in each contract submitted to the market administrator.

(d) In the event that a handler's contract milk exceeds the handler's eligible milk for any month in which the specified contract price(s) are below the order's minimum prices, the handler must designate which producer milk shall not be contract milk. If the handler does not designate the suppliers of the over-contracted milk, the market administrator shall prorate the over-contracted milk to each producer and cooperative association having a forward contract with the handler.

(e) Payments for milk covered by a forward contract must be made on or before the dates applicable to payments for milk that are not under forward contract under the respective Federal milk marketing order.

(f) Nothing in this part shall impede the contractual arrangements that exist between a cooperative association and its members.

Subpart C—Enforcement

§ 1145.3 Enforcement.

A handler may not require participation in a forward pricing contract as a condition of the handler receiving milk from a producer or cooperative association of producers. USDA will investigate all complaints made by producers or cooperative associations alleging coercion by handlers to enter into forward contracts and based on the results of the investigation will take appropriate action.

Dated: October 24, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–25856 Filed 10–30–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0430; Directorate Identifier 2007–SW–42–AD; Amendment 39–15694; AD 2008–21–10]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332 C, L, L1 and L2 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by the aviation authority of France to identify and correct an unsafe condition on an aviation product. The aviation authority of France, with which we have a bilateral agreement, states in the MCAI: ''This Airworthiness Directive (AD) is issued following two cases of LH hydraulic power system loss on two AS332 helicopters. In both cases, the pilot received the ''low level'' hydraulic failure alarm. The investigations conducted on the two helicopters revealed a hydraulic fluid leak from the hydraulic pump casing. In both cases, incorrect position of the liner of the compensating piston had caused the seals to deteriorate. This incorrect positioning of the liner is due to non-compliant application of the repair process by a repair station. Deterioration of hydraulic pumps causes:

- The loss of the RH and LH hydraulic power systems in the event of a substantial hydraulic fluid leak from both hydraulic pumps during a given flight.
- The loss of the hydraulic system concerned, in the event of a substantial hydraulic fluid leak from only one pump.''

This AD requires actions that are intended to address this unsafe condition.

DATES: This AD becomes effective on December 5, 2008.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of December 5, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com.*

Examining the AD Docket: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the specified Eurocopter model helicopters on April 3, 2008. That NPRM was published in the **Federal Register** on April 22, 2008 (73 FR 21553). That NPRM proposed to replace

certain unairworthy hydraulic pumps with airworthy pumps. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Relevant Service Information

Eurocopter France has issued Emergency Alert Service Bulletin No. 01.00.73, dated August 23, 2007 (ASB). The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the ASB.

Differences Between This AD and the MCAI

• We do not require the operator to return the hydraulic pump to the manufacturer nor any action on non-installed hydraulic pumps.

• We changed ''flying hours'' to ''hours time-in-service.''

In making these changes, we do not intend to differ substantively from the information provided in the MCAI. These differences are highlighted in the ''Differences Between the FAA and the MCAI'' section in the AD.

Costs of Compliance

We estimate that this AD will affect about 4 helicopters of U.S. registry. We also estimate that it will take about 2.5 work-hours per helicopter to inspect and replace one hydraulic pump. The average labor rate is $80 per work-hour. Each pump will cost about $26,000 and require two hydraulic pumps per helicopter. Based on these figures, we estimate the cost of the AD on U.S. operators will be $209,600 to replace all the hydraulic pumps on the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–21–10 Eurocopter France: Amendment 39–15694; Docket No. FAA–2008–0430; Directorate Identifier 2007–SW–42–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on December 5, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Models AS332C, L, L1, and L2 helicopters, with a hydraulic pump made by Messier-Bugatti, part number C24160–X, C24160–XXX, C241600XX, C241600XX–X, and C241600XX–XXX, with a serial number without the suffix letter ''V'', listed in paragraph 1.A.1., of Eurocopter France Emergency Alert Service Bulletin 01.00.73, dated August 23, 2007 (ASB) installed, certificated in any category.

Note: The letter ''V'' is a suffix marked after the serial number on the pump's identification plate to signify that the pump has been determined to conform to the approved design data.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states: ''This Airworthiness Directive (AD) is issued following two cases of LH hydraulic power system loss on two AS332 helicopters. In both cases, the pilot received the 'low level' hydraulic failure alarm. The investigations conducted on the two helicopters revealed a hydraulic fluid leak from the hydraulic pump casing. In both cases, incorrect position of the liner of the compensating piston had caused the seals to deteriorate. This incorrect positioning of the liner is due to non-compliant application of the repair process by a repair station. Deterioration of hydraulic pumps causes:

• The loss of the RH and LH hydraulic power systems in the event of a substantial hydraulic fluid leak from both hydraulic pumps during a given flight.

• The loss of the hydraulic system concerned, in the event of a substantial hydraulic fluid leak from only one pump.''

This AD requires actions that are intended to address this unsafe condition.

Actions and Compliance

(e) Unless already done, do the following actions:

(1) Within 15 hours time-in-service (TIS), determine the part number and serial number of the installed hydraulic pumps. If the serial number of both the hydraulic pumps are listed in paragraph 1.A.1. of the ASB, before further flight, replace at least one of the pumps with an airworthy pump with a serial number other than one listed in paragraph 1.A.1 of the ASB or one with a serial number containing the letter ''V''. Replace the pump by following the Accomplishment Instructions, paragraph 2. B. of the ASB, except this AD does not require you to return the hydraulic pump to the manufacturer.

(2) Within the next 12 months, replace all remaining hydraulic pumps having a serial number listed in paragraph 1.A.1 of the ASB by following the Accomplishment Instructions, paragraph 2.B. of the ASB, except this AD does not require you to return the hydraulic pump to the manufacturer.

Differences Between This AD and the MCAI

(f) We do not require the operator to return the hydraulic pump to the manufacturer nor do we require any action on non-installed hydraulic pumps. Also, we changed ''flying hours'' to ''hours time-in-service.''

Subject

(g) Air Transport Association of America (ATA) Code: 2913 Hydraulic Pump.

Other Information

(h) The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Uday Garadi, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

Related Information

(i) MCAI Airworthiness Directive No. F–2007–010, dated September 12, 2007, contains related information.

Material Incorporated by Reference

(j) You must use the specified portions of Eurocopter France Emergency Alert Service Bulletin 01.00.73, dated August 23, 2007, to do the actions required.

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

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com.*

(3) You may review copies at the FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0112; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 30, 2008.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–24987 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0623; Directorate Identifier 2008–NM–089–AD; Amendment 39–15699; AD 2008–22–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

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

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards * * *.

[A]ssessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. * * *

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

DATES: This AD becomes effective December 5, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 5, 2008.

The Director of the Federal Register approved the incorporation by reference of Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007, listed in this AD, as of April 16, 2008 (73 FR 13098, March 12, 2008).

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

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 9, 2008 (73 FR 32486) and proposed to supersede AD 2008–06–01, Amendment 39–15413 (73 FR 13098, March 12, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Models CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053, Part 2, Section 3 ''Fuel System Limitations'' to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Remove References to Later Revisions

We removed the references to ''later revisions'' of the applicable service information in paragraphs (f) and (g)(2) of this AD to be consistent with FAA policy and Office of the Federal Register regulations. We may consider approving the use of later revisions of the service information as an alternative method of compliance with this AD, as provided by paragraph (h)(1) of this AD.

New Service Information

We received Revision 10, dated March 20, 2008, of Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 maintenance requirements manual CSP B–053. The tasks specified in Revision 10 of the Maintenance Requirements Manual (MRM) are essentially the same as those in the previous revision of the MRM cited in the NPRM. We have revised paragraphs (f) and (g)(1) of the AD to reference Revisions 9 and 10 of the MRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 289 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $23,120, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15413 (73 FR 13098, March 12, 2008) and adding the following new AD:

2008–22–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–15699. Docket No. FAA–2008–0623; Directorate Identifier 2008–NM–089–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 5, 2008.

Affected ADs

(b) This AD supersedes AD 2008–06–01, Amendment 39–15413.

Applicability

(c) This AD applies to all Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Models CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053, Part 2, Section 3 ''Fuel System Limitations'' to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Restatement of Certain Requirements of AD 2008–06–01

(f) Unless already done, within 60 days after April 16, 2008 (the effective date of AD 2008–06–01), revise the ALS of the Instructions for Continued Airworthiness to incorporate the inspection requirements in Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision

9, dated July 20, 2007; or Revision 10, dated March 20, 2008.

New Requirements of This AD: Actions and Compliance

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

(1) For task numbers 24–90–00–601, 24–90–00–602, 28–00–00–601, 28–11–23–601, 28–11–23–602, 28–12–13–601, 29–30–00–601, and 29–30–00–602 identified in Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007; or Revision 10, dated March 20, 2008: The initial compliance times start at the later of the applicable ''Threshold'' and ''Grace Period'' times specified in Table 1 of this AD, and the repetitive limitation tasks must be accomplished thereafter at the applicable interval specified in Revision 9 or Revision 10 of the Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, except as provided by paragraph (g)(2) and (h)(1) of this AD.

TABLE 1—INITIAL INSPECTIONS

Description	Compliance time (whichever occurs later)	
	Threshold	Grace period
Tasks with limiting intervals of 8,000 flight hours.	Before the accumulation of 8,000 total flight hours.	Within 2,000 flight hours after the effective date of this AD.
Tasks with limiting intervals of 20,000 flight hours.	Before the accumulation of 20,000 total flight hours.	Within 6,000 flight hours after the effective date of this AD.
Tasks with limiting intervals of 30,000 flight hours.	Before the accumulation of 30,000 total flight hours.	Within 6,000 flight hours after the effective date of this AD.

(2) After accomplishing the actions specified in paragraph (g)(1) of this AD, no alternative inspections/limitation tasks or inspection/limitation task intervals may be used unless the inspection/limitation task or inspection/limitation task interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2007–28, dated November 22, 2007; and Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007; or Revision 10, dated March 20, 2008; for related information.

Material Incorporated by Reference

(j) You must use Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007; or Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 10, dated March 20, 2008; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 10, dated March 20, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, Revision 9, dated July 20, 2007, on April 16, 2008 (73 FR 13098, March 12, 2008).

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(4) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 9, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25302 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27628; Directorate Identifier 2007–CE–025–AD; Amendment 39–15713; AD 2007–07–06 R1]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing) Models LC40–550FG, LC41–550FG, and LC42–550FG Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to revise AD 2007–07–06, which applies to certain Cessna Aircraft Company (type certificate previously held by Columbia Aircraft Manufacturing) (Cessna) Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes. AD 2007–07–06 currently requires the following: Adding information to the limitations section of

the airplane flight manual (AFM); repetitively inspecting the aileron and the elevator linear bearings and control rods for foreign object debris, scarring, or damage; and taking all necessary corrective actions. Since we issued AD 2007–07–06, Cessna has issued a new service bulletin that contains procedures for installing an access panel to facilitate the required inspections. Consequently, this AD retains the actions currently required in AD 2007–07–06; allows installing access panels; and changes the serial number applicability. We are issuing this AD to prevent jamming in the aileron and elevator control systems, which could result in failure. This failure could lead to loss of control.

DATES: This AD becomes effective on December 5, 2008.

On December 5, 2008, the Director of the Federal Register approved the incorporation by reference of Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and Cessna Mandatory Service Bulletin SB–07–018, dated May 29, 2008, listed in this AD.

As of April 9, 2007 (72 FR 15822, April 3, 2007), the Director of the Federal Register approved the incorporation by reference of Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, listed in this AD.

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67227; phone (316) 517–5800; fax: (316) 942–9006.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2007–27628; Directorate Identifier 2007–CE–025–AD.

FOR FURTHER INFORMATION CONTACT: Jeff Morfitt, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, WA 98057; telephone: (425) 917–6405; fax: (425) 917–6590; *jeff.morfitt@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On August 1, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 7, 2008 (73 FR 45902). The NPRM proposed to revise AD 2007–07–06 with a new AD that will retain the actions currently required in AD 2007–07–06; allow installing access panels; and change the serial number applicability.

Comments

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

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 1,495 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	Not applicable	$320	$478,400

We estimate the following costs to do the optional access panel installation:

Labor cost	Parts cost	Total cost per airplane
14 work-hours × $80 per hour = $1,120	Not applicable	$1,120

Warranty credit for installing the access panel may be given to the extent noted in Cessna Mandatory Service Bulletins SB–07–018, dated May 29, 2008.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other

information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–27628; Directorate Identifier 2007–CE–025–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–07–06, Amendment 39–15011 (72 FR 15822, April 3, 2007), and adding the following new AD:

2007–07–06 R1 Cessna Aircraft Company (type certificate previously held by Columbia Aircraft Manufacturing): Amendment 39–15713; Docket No. FAA–2007–27628; Directorate Identifier 2007–CE–025–AD.

Effective Date

(a) This AD becomes effective on December 5, 2008.

Affected ADs

(b) This AD revises AD 2007–07–06, Amendment 39–15011.

Applicability

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

Model	Serial Nos.
LC40–550FG	40001 through 40079.
LC41–550FG	41001 through 41800 and 411001 through 411041.
LC42–550FG	42001 through 42569 and 421001 through 421006.

Unsafe Condition

(d) This AD is the result of reports of possible foreign object contamination of the linear bearings. We are issuing this AD to prevent jamming in the aileron and elevator control systems, which could result in failure. This failure could lead to loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Insert Appendix A of Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, or Appendix A of Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, into the limitations section of the airplane flight manual (AFM).	Before further flight after April 9, 2007 (the compliance date retained from AD 2007–07–06).	Under 14 CFR 43.7, the owner/operator holding at least a private pilot certificate is allowed to do the AFM insertion requirement of this AD. Make an entry into the aircraft logbook showing compliance with this portion of the AD per compliance with 14 CFR 43.9.
(2) Access and inspect the aileron bearings in both wings and the elevator bearings in the fuselage for foreign object debris.	Initially inspect within the next 35 hours time-in-service (TIS) after April 9, 2007 (the compliance date retained from AD 2007–07–06) Repetitively inspect thereafter at intervals not to exceed 12 calendar months.	Following Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, or Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and FAA-approved maintenance procedures. The appropriate maintenance manual contains these procedures.
(3) Remove any debris found during any inspection required in paragraph (e)(2) of this AD.	Before further flight after the inspection in which the debris is found.	Following Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, or Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and FAA-approved maintenance procedures. The appropriate maintenance manual contains these procedures.
(4) Inspect the aileron and elevator control rods for scarring or damage near the linear bearings.	Initially inspect within the next 35 hours TIS after April 9, 2007 (the compliance date retained from AD 2007–07–06). Repetitively inspect thereafter at intervals not to exceed 12 calendar months.	Following Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, or Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and FAA-approved maintenance procedures. The appropriate maintenance manual contains these procedures.
(5) Contact the manufacturer at the address specified in paragraph (h)(3) of this AD for a repair scheme if any scarring or damage is found during any inspection required in paragraph (e)(4) of this AD.	Make all repairs before further flight after the inspection in which scarring or damage is found.	Following Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, or Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and FAA-approved maintenance procedures. The appropriate maintenance manual contains these procedures.
(6) For the inspections required in paragraphs (e)(2) and (e)(4) of this AD, you may install a linear bearing access panel instead of drilling an inspection hole. If the hole has previously been drilled, the access panel may also be installed in addition to the inspection hole.	At any time after the effective date of this AD	Following Cessna Mandatory Service Bulletin SB–07–018, dated May 29, 2008.

Note 1: Previous compliance with paragraphs (e)(1) through (e)(5) of this AD using Columbia Mandatory Service Bulletin SB–07–002A, dated August 29, 2007; Cessna Mandatory Service Bulletin SB–07–002B, dated December 10, 2007; or Cessna Mandatory Service Bulletin SB–07–002C, dated February 18, 2008, are acceptable methods of compliance.

Note 2: Compliance with Cessna Mandatory Service Bulletin SB–07–018, dated May 29, 2008, is not considered terminating action for this AD. This AD takes precedence over Cessna Mandatory Service Bulletin SB–07–018, dated May 29, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Jeff Morfitt, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, WA 98057; telephone: (425) 917–6405; fax: (425) 917–6590, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(g) AMOCs approved for AD 2007–07–06 are approved for this AD.

Material Incorporated by Reference

(h) You must use Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007, or Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and Cessna Mandatory Service Bulletin SB–07–018, page 1 dated May 29, 2008, pages 2 through 20 dated May 30, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Cessna Mandatory Service Bulletin SB–07–002D, dated May 29, 2008, and Cessna Mandatory Service Bulletin SB–07–018, page 1 dated May 29, 2008, pages 2 through 20 dated May 30, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 9, 2007 (72 FR 15822, April 3, 2007), the Director of the Federal Register approved the incorporation by reference of Columbia Mandatory Service Bulletin SB–07–002, dated March 14, 2007.

(3) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67227.

(4) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 21, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25500 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0848; Directorate Identifier 2008–NM–082–AD; Amendment 39–15702; AD 2008–22–07]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

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

ACTION: Final rule.

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required * * * a design review against explosion risks.

* * * * *

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 5, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 5, 2008.

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 7, 2008 (73 FR 45888). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) in June 2001. In their Letters referenced 04/00/02/07/01–L296 dated March 4th, 2002 and 04/00/02/07/03–L024, dated February 3rd, 2003, the Joint Aviation Authorities (JAA) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under current European Union regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3,402 kg) or more, which have received their certification after January 1st, 1958, are required to conduct a design review against explosion risks.

This Airworthiness Directive (AD), which is the result of one of these design reviews, requires a wiring modification of the FQIS (Fuel Quantity Indication System) Signal conditioner 28VDC (volts direct current) supply and replacement of the Fuel Pump harness inside the wing tanks (both LH and RH (left- and right-hand)).

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective actions include functional and operational tests. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify the type certificate holder as published in the most recent type certificate data sheet for the affected model.

Conclusion

We reviewed the available data and determined that air safety and the

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 6 products of U.S. registry. We also estimate that it will take about 80 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $14,040 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $122,640, or $20,440 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–22–07 Saab AB, Saab Aerosystems: Amendment 39–15702. Docket No. FAA–2008–0848; Directorate Identifier 2008–NM–082–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 5, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) in June 2001. In their Letters referenced 04/00/02/07/01–L296 dated March 4th, 2002 and 04/00/02/07/03–L024, dated February 3rd, 2003, the Joint Aviation Authorities (JAA) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under current European Union regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3,402 kg) or more, which have received their certification after January 1st, 1958, are required to conduct a design review against explosion risks.

This Airworthiness Directive (AD), which is the result of one of these design reviews, requires a wiring modification of the FQIS (Fuel Quantity Indication System) Signal conditioner 28VDC (volts direct current) supply and replacement of the Fuel Pump harness inside the wing tanks (both LH and RH (left- and right-hand)).

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective actions include functional and operational tests.

Actions and Compliance

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

(1) Within 72 months after the effective date of this AD, replace the fuel pump harness inside each (both left- and right-hand) inboard wing fuel tank in accordance with the Accomplishment Instructions of Saab 2000 Service Bulletin 2000–28–013, dated October 11, 2007 (Modification 6250), including a follow-up functional test and operational test.

(2) Within 72 months after the effective date of this AD, modify the wiring of the 28 VDC supply to the signal conditioner and the 132VP (feed-through connector) in accordance with the Accomplishment Instructions of Saab 2000 Service Bulletin 2000–28–014, Revision 02, dated January 23, 2008 (Modification 6251), including the follow-up operational test.

(3) Actions done before the effective date of this AD in accordance with Saab 2000 Service Bulletin 2000–28–014, Revision 01, dated November 6, 2007, are acceptable for

compliance with the requirements of paragraph (f)(2) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0031, dated February 15, 2008; Saab 2000 Service Bulletin 2000–28–013, dated October 11, 2007; and Saab 2000 Service Bulletin 2000–28–014, Revision 02, dated January 23, 2008; for related information.

Material Incorporated by Reference

(i) You must use Saab 2000 Service Bulletin 2000–28–013, dated October 11, 2007; and Saab 2000 Service Bulletin 2000–28–014, Revision 02, dated January 23, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581.88, Linköping, Sweden; telephone 011 46 13 18 5591; fax 011 46 13 18 4874; e-mail *http://www.saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com*.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 9, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25307 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28391; Airspace Docket No. 07–AAL–10]

Modification to the Norton Sound Low, Woody Island Low, Control 1234L and Control 1487L Offshore Airspace Areas; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the following four Offshore Airspace Areas in Alaska: Norton Sound Low, Woody Island Low, Control 1234L and Control 1487L. This action lowers the airspace floors to provide additional controlled airspace for aircraft instrument flight rule (IFR) operations at Alaska airports.

DATES: *Effective Date:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Wednesday July 30, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify four Alaskan Offshore Airspace Areas: Norton Sound Low, Woody Island Low, Control 1234L and Control 1487L (73 FR 44201). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. A review of the airspace description revealed that it contained two items that were unnecessary. The Norton Sound Low 1,200 foot description for Selawik, AK, is not required. Similarly, the 1,200 ft. description for Control 1234L had duplicate references to Eareckson Air Force Station. These two items are addressed in the airspace descriptions below. With the exception of editorial changes, this amendment is the same as that proposed in the NPRM.

These airspace areas are published in paragraph 6007 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Areas listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 modifying the Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas, AK. The Norton Sound Low Offshore Airspace Area is being modified by lowering the offshore airspace floor to 1,200 feet mean sea level (MSL) at the following airports: within 78 miles of Buckland; within 73 miles of Chevak; within 74 miles of Kotzebue; within 73 miles of Noatak; and within 73 miles of Port Heiden. In addition, the Norton Sound Low Offshore Airspace area is being lowered to 700 feet MSL at Port Heiden Airport.

The Woody Island Low Offshore Airspace Area is being modified in the vicinity of the Kodiak, Middleton Island and Port Heiden Airports by lowering the offshore airspace floor to 1,200 feet MSL within 73 miles of Kodiak and Port Heiden Airports, and within 42 miles of Middleton Island Airport.

Additionally, the Control 1234L Offshore Airspace area is being modified by lowering the offshore airspace floor to 700 feet above the surface within 6.3 miles, and 1,200 feet above the surface within 45 miles, of Nikolski Airport; and within 1,200 feet above the surface within 73 miles of Port Heiden Airport.

Finally, this action modifies the Control 1487L Offshore Airspace Area by lowering the offshore airspace floor to 1,200 feet MSL within 73 miles of Kodiak Airport, and corrects an error in one coordinate adjoining the Woody Island Low Control Area. This correction will align the adjoining airspaces.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is with the scope of that authority as it provides additional controlled airspace for aircraft IFR operations at Alaska airports.

ICAO Considerations

As part of this action relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty.

A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has been reviewed by the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 56°42′59″ N., long. 160°00′00″ W., north by a line 12 miles from and parallel to the U.S. coastline to the intersection with 164°00′00″ W., longitude near the outlet to Kotzebue Sound, then north to the intersection with a point 12 miles from the U.S. coastline, then north by a line 12 miles from and parallel to the shoreline to lat. 68°00′00″ N., to lat. 68°00′00″ N., long. 168°58′23″ W., to lat. 65°00′00″ N., long. 168°58′23″ W., to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to lat. 58°06′57″ N., long. 160°00′00″ W., to the point of beginning; and that airspace extending upward from 1,200 feet MSL north of the Alaska Peninsula and east of 160° W. longitude within 73 miles of the Port Heiden NDB/DME, AK, and north of the Alaska Peninsula and east of 160° W. longitude within an 81.2-mile radius of Perryville Airport, AK, and north of the Alaska Peninsula and east of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK, and within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., and within a 73-mile radius of the Chevak Airport, AK, and within a 45-mile radius of Hooper Bay Airport, AK, and within a 73-mile radius of St. Michael Airport, AK, and within a 77.4-mile radius of the Nome VORTAC, AK, and within a 30-mile radius of lat. 66°09′58″ N., long. 166°30′03″ W., and within a 30-mile radius of lat. 66°19′55″ N., long. 165°40′32″ W., and within a 74-mile radius of the Kotzebue VOR/DME, AK, and within a 73-mile radius of the Noatak Airport, AK; and within a 71NM radius of New Stuyahok Airport, AK; and that airspace extending upward from 700 feet MSL within 8 miles west and 4 miles east of the 339° bearing from the Port Heiden NDB/DME, AK, extending from the Port Heiden NDB/DME, AK, to 20 miles north of the Port Heiden NDB/DME, AK, and within a 25-mile radius of Nome Airport, AK.

* * * * *

Woody Island Low, AK [Amended]

That airspace extending upward from 14,500 feet MSL within the area bounded by a line beginning at lat. 53°30′00″ N., long. 160°00′00″ W., to lat. 56°00′00″ N., long. 153°00′00″ W., to lat. 56°45′42″ N., long. 151°45′00″ W., to lat. 58°19′58″ N., long. 148°55′07″ W., to lat. 59°08′34″ N., long. 147°16′06″ W., then clockwise via the 149.5-mile radius from the Anchorage, VOR/DME, AK, to the intersection with a point 12 miles from and parallel to the U.S. coastline, then southwest by a line 12 miles from and parallel to the U.S. coastline to the intersection with 160°00′00″ W. longitude, to the point of beginning; and that airspace extending upward from 1,200 feet MSL, within 73 miles of the Kodiak Airport, AK, and that airspace extending south and east of the Alaska Peninsula within a 72.8-mile radius of Chignik Airport, AK, and outside

(south) of the 149.5-mile radius of the Anchorage VOR/DME, AK, within a 73-mile radius of Homer Airport, AK, and within a 42-mile radius of the Middleton Island VOR/DME, AK, and south and east of the Alaska Peninsula within an 81.2-mile radius of Perryville Airport, AK, and south of the Alaska Peninsula within a 73-mile radius of the Port Heiden NDB/DME, AK.

* * * * *

Control 1234L [Amended]

That airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., then south along 160°00′00″ W. longitude, until it intersects the Anchorage Air Route Traffic Control Center (ARTCC) boundary; then southwest, northwest, north, and northeast along the Anchorage ARTCC boundary to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within a 26.2-mile radius of Eareckson Air Station, AK, within an 11-mile radius of Adak Airport, AK, and within 16 miles of Adak Airport, AK, extending clockwise from the 033° bearing to the 081° bearing from the Mount Moffett NDB, AK, and within a 10-mile radius of Atka Airport, AK, and within a 10.6-mile radius from Cold Bay Airport, AK, and within 9 miles east and 4.3 miles west of the 321° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 20 miles northwest of Cold Bay Airport, AK, and 4 miles each side of the 070° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 13.6 miles northeast of Cold Bay Airport, AK, and west of 160° W. longitude within an 81.2-mile radius of Perryville Airport, AK, and within a 45-mile radius of the Nikolski Airport, AK, and west of 160° W. longitude within a 73-mile radius of the Port Heiden NDB/DME, AK, and within a 10-mile radius of St. George Airport, AK, and within a 73-mile radius of St. Paul Island Airport, AK, and within a 20-mile radius of Unalaska Airport, AK, extending clockwise from the 305° bearing from the Dutch Harbor NDB, AK, to the 075° bearing from the Dutch Harbor NDB, AK, and west of 160° W. longitude within a 25-mile radius of the Borland NDB/DME, AK, and west of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK, and within a 7-mile radius of Adak Airport, AK, and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing from the Mount Moffett NDB, AK, extending from the 7-mile radius of Adak Airport, AK, to 11.5 miles northeast of Adak Airport, AK and within a 6.5-mile radius of King Cove Airport, and extending 1.2 miles either side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles, and within a 6.4-mile radius of the Atka Airport, AK, and within a 6.3-mile radius of Nelson Lagoon Airport, AK, and within a 6.3-mile radius of the Nikolski Airport, AK, and within a 6.4-mile radius of Sand Point Airport, AK, and within 3 miles each side of the 172° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK, and within 5 miles either side of the 318° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within 5 miles either side of the 324° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of the Sand Point Airport, AK, and within a 6.6-mile radius of St. George Airport, AK, and within an 8-mile radius of St. Paul Island Airport, AK, and 8 miles west and 6 miles east of the 360° bearing from St. Paul Island Airport, AK, to 14 miles north of St. Paul Island Airport, AK, and within 6 miles west and 8 miles east of the 172° bearing from St. Paul Island Airport, AK, to 15 miles south of St. Paul Island Airport, AK, and within a 6.4-mile radius of Unalaska Airport, AK, and within 2.9 miles each side of the 360° bearing from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 7.7 miles southeast of Cold Bay Airport, AK, and within 3 miles west and 4 miles east of the 335° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 12.2 miles northwest of Cold Bay Airport, AK.

* * * * *

Control 1487L [Amended]

That airspace extending upward from 8,000 feet MSL within 149.5 miles of the Anchorage VOR/DME clockwise from the 090° radial to the 185° radial of the Anchorage VOR/DME, AK; and that airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19′58″ N., long. 148°55′07″ W.; to lat. 59°08′34″ N., long. 147°16′06″ W.; thence counterclockwise via the 149.5-mile radius of the Anchorage VOR/DME, AK, to the intersection with a point 12 miles from and parallel to the U.S. coastline; thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary; to lat. 54°32′57″ N., long. 133°11′29″ W.; to lat. 54°00′00″ N., long. 136°00′00″ W.; to lat. 52°43′00″ N., long. 135°00′00″ W.; to lat. 56°45′42″ N., long. 151°45′00″ W.; to the point of beginning; and that airspace extending upward from 1,200 feet MSL within the area bounded by a line beginning at lat. 59°33′25″ N., long. 141°03′22″ W.; thence southeast 12 miles from and parallel to the U.S. coastline to lat. 58°56′18″ N., long. 138°45′19″ W.; to lat. 58°40′00″ N., long. 139°30′00″ W.; to lat. 59°00′00″ N., long. 141°10′00″ W.; to the point of beginning, and within an 85-mile radius of the Biorka Island VORTAC, AK, and within a 42-mile radius of the Middleton Island VOR/DME, AK, and within a 30-mile radius of the Glacier River NDB, AK, and within a 149.5-mile radius of the Anchorage VOR/DME, AK, and within a 73-mile radius of Homer Airport, AK, and within a 73-mile radius of the Kodiak Airport, AK; and that airspace extending upward from 700 feet MSL within 14 miles of the Biorka Island VORTAC, AK, and within 4 miles west and 8 miles east of the Biorka Island VORTAC 209° radial extending to 16 miles southwest of the Biorka Island VORTAC, AK.

* * * * *

Issued in Washington, DC, on October 22, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–25941 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2006–25709]

RIN 2120–A170

Congestion Management Rule for LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; clarification of final rule.

SUMMARY: On October 10, 2008, the FAA issued a final rule to address congestion at New York's LaGuardia Airport (LaGuardia). That final rule is scheduled to take effect December 9, 2008. As part of the final rule, the FAA explained how it would initially allocate slots to incumbent carriers on the rule's effective date. The preamble to the final rule noted that it would not allocate slots to a carrier that was no longer operating at the airport. However, it did not address how those slots would be allocated under the rule. Today's notice provides that explanation.

ADDRESSES: To read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket. Alternatively, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this clarification notice contact: Nan Shellabarger, Office of Aviation Policy and Plans, APO–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3275; e-mail

nan.shellabarger@faa.gov. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION: On October 10, 2008, the FAA issued a final rule to address congestion at LaGuardia. 73 FR 60574. That final rule is scheduled to take effect December 9, 2008. As part of the final rule, the FAA explained how it would initially allocate slots to incumbent carriers no later than the rule's effective date. Under the rule, initial allocation is based on Operating Authorizations allocated under the Order Limiting Operations at LaGuardia Airport (LaGuardia Order) to carriers for the week of September 28, 2008. The preamble to the final rule noted that it would not allocate slots to a carrier that was no longer operating at the airport. However, it did not address how those slots would be allocated under the rule. Specifically, the preamble to the final rule stated:

One carrier that held Operating Authorizations in January 2007 is no longer in business, although it continues to hold an air carrier certificate. While those Operating Authorizations are currently being operated by another carrier solely within its marketing control, the FAA believes it is simply cleaner to allocate the slots to the holder of the Operating Authorization only if the carrier is still operating at the airport. (73 FR 60585)

Section 93.39(b) of the final rule's regulatory text states:

If a carrier was allocated operating rights under the Order Limiting Operations at LaGuardia Airport during the week of September 28–October 4, 2008, but the operating rights were held by another carrier regularly conducting operations at the airport as of that week, then the corresponding slots will be assigned to the carrier that held the operating rights for that period, as evidenced by the FAA's records.

Under the LaGuardia Order, ATA Airlines was allocated 14 slots at the airport. These slots have been operated under lease agreements by AirTran and Delta Air Lines. However, the allocation has remained with ATA Airlines. That carrier ceased operations at LaGuardia on January 7, 2008, and ceased operations entirely on April 3, 2008. Thus, section 93.39(b) does not apply. Likewise, these slots would not be considered new or returned capacity that can be reallocated only via auction under 93.40 and then designated as unrestricted slots. Since no provision of the final rule specifically directs how these types of slots will be allocated, the FAA believes it is appropriate to provide clarification.

On October 17, 2008, in the bankruptcy proceeding of In re: ATA Airlines, Inc., U.S. Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, case no. 08–03675–BHL–1 1, the court issued an Order Granting Expedited Motion under Bankruptcy Code Sections 105 and 363 to Establish Solicitation and Bid Procedures for the Sale of the Debtor 's Business (Bankruptcy Order). The Bankruptcy Order establishes rules and procedures that will govern the solicitation and submission of proposals for the acquisition of ATA Airlines. At present, initial bids are due to the ATA Airlines by November 3, 2008. ATA Airlines will determine which Bid Proposal (as defined in the Bankruptcy Order) is the highest and best offer for the sale of the business. Each Bid Proposal shall be subject to bankruptcy court approval.

In proceeding before the court, the FAA has reiterated that the Operating Authorizations allocated under the LaGuardia Order cannot be sold. However, the Bankruptcy Order addresses the sale of the business as a whole. Accordingly, for the purpose of the LaGuardia Order and the Final Rule, the FAA would consider the acquiring entity to stand in the shoes of ATA Airlines. If the acquiring entity is an air carrier,[1] the FAA will allocate the 14 LaGuardia slots to that entity. The acquiring carrier need not currently have a presence at the airport. The provision in the preamble that the air carrier must operate at LaGuardia was directed to the holder of the Operating Authorization under the LaGuardia Order. The FAA simply did not contemplate a circumstance whereby ATA Airlines could be acquired by another carrier under bankruptcy proceedings.

The FAA understands that several aspects of the final rule need to be addressed given the possibility of these slots being allocated outside of the context of the LaGuardia Order.

- As is the case with all slots allocated in a manner other than under the provisions of section 93.40, these slots will be designated as common slots and, except as discussed below, will be subject to the rule's usage requirements and may be withdrawn for operational need.
- Should the acquisition transaction not be completed until after the rule's effective date, the FAA will hold the slots in abeyance until the transaction is complete, at which point it will allocate the slots.
- The slots will be included in the total number of common slots initially allocated to the carrier under the rule. Should the total number of common slots exceed 20, the carrier may lose a percentage of the slots in accordance with the final rule. However, depending on when the slots are allocated, reversion of the additional slots may not occur before March, 2010.
- Since the bankruptcy court order includes unexpired leases, the FAA anticipates the acquiring carrier will comply with the requirements of all leases related to the slots, including any time frames provided for termination of the lease agreement.
- The FAA will waive the usage requirements for a period of no more than six months following allocation so that the acquiring carrier has the opportunity to establish new routes or services.

[1] Only air carriers can hold either Operating Authorizations under the LaGuardia Order or slots under the final rule. Accordingly, the FAA assumes that only an existing air carrier would be likely to bid on ATA Airlines if its primary interest is acquiring the LaGuardia slots. Any entity that does not currently possess an air carrier certificate should contact the FAA's Indianapolis Flight Standards District Office (FSDO) to discuss concerns regarding ATA Airlines' operating certificate. Operating certificates cannot be sold, and the FAA requires certain criteria be met before it will issue a certificate. Questions to the Indianapolis FSDO should be directed to Ron Myers at (317) 837–4419 or Bruce Montigney at (317) 837–4410.

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulationspolicies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Issued in Washington, DC on October 27, 2008.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations, Federal Aviation Administration.

[FR Doc. E8–26039 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2008–N–0039]

Oral Dosage Form New Animal Drugs; Firocoxib Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for veterinary prescription use of firocoxib chewable tablets in dogs for the control of postoperative pain and inflammation associated with orthopedic surgery.

DATES: This rule is effective October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 141–230 for PREVICOX (firocoxib) Chewable Tablets. The supplemental application provides for the veterinary prescription use of firocoxib chewable tablets in dogs for the control of postoperative pain and inflammation associated with orthopedic surgery. The NADA is approved as of September 23, 2008, and the regulations in 21 CFR 520.928 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.928, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 520.928 Firocoxib tablets.

* * * * *

(c) * * *

(1) *Amount.* 5 mg/kg (2.27 mg/lb) body weight. Administer once daily for osteoarthritis. Administer approximately 2 hours before soft-tissue or orthopedic surgery.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis; and for the control of postoperative pain and inflammation associated with soft-tissue and orthopedic surgery.

* * * * *

Dated: October 17, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–26020 Filed 10–30–08; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 393

[Docket No. MARAD 2008 0096]

RIN 2133–AB70

America's Marine Highway Program, Corrections

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Correcting amendment.

SUMMARY: The Maritime Administration is correcting an interim final rule that appeared in the **Federal Register** of October 9, 2008 (73 FR 59530). Due to the current financial environment and the receipt of informal comments indicating that one hundred and twenty (120) days is insufficient time to formulate an application, this document changes the summary section of the regulation to reflect that the Maritime Administration is seeking comment on the America's Marine Highway program and recommendations for Marine Highway Corridors and not soliciting applications for specific projects at this time.

DATES: *Effective Date:* This final rule is effective November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, Office of Intermodal System Development, Marine Highways and Passenger Services, at (202) 366–5468, via e-mail at *michael.gordon@dot.gov,* or by writing to the Office of Marine Highways and Passenger Services, MAR–520, Suite W21–315, 1200 New Jersey Avenue, SE., Washington, DC. 20590.

SUPPLEMENTARY INFORMATION:

In FR Doc. 2008–0096 appearing on page 59530 in the **Federal Register** of Thursday, October 9, 2008, the following corrections are made:

Summary [Corrected]

1. On page 59530, the first sentence is corrected to read ''The purpose of this interim final rule is to solicit recommendations for short sea transportation routes to be designated as Marine Highway Corridors and to seek further comment on the Marine Highway program as set forth in this regulation by section 55605(c) of Public Law 110–140, the Energy Independence and Security Act of 2007.''

Dated: October 23, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–25958 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2249; MB Docket No. 08–148; RM–11474]

Television Broadcasting Services; Fort Worth, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Television Station KTXA L.P. (''KTXA''), licensee of station KTXA–DT, to substitute DTV channel 19 for post-transition DTV channel 18 at Fort Worth, Texas.

DATES: This rule is effective December 1, 2008.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–148, adopted October 6, 2008, and released October 7, 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 information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding DTV channel 19 and removing DTV channel 18 at Fort Worth.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–25951 Filed 10–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2248; MB Docket No. 08–147; RM–11473]

Television Broadcasting Services; Stuart, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Gunter Marksteiner, the permittee of station WHDT–DT, to substitute DTV channel 42 for post-transition DTV channel 44 at Stuart, Florida.

DATES: This rule is effective December 1, 2008.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–147, adopted October 6, 2008, and released October 7, 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., 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 information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Florida, is amended by adding DTV channel 42 and removing DTV channel 44 at Stuart.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–25953 Filed 10–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2247; MB Docket No. 08–155; RM–11479]

Television Broadcasting Services; Honolulu, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by HITV License Subsidiary, Inc., licensee of station KGMB–DT, to substitute DTV channel 22 for post-transition DTV channel 9 at Honolulu, Hawaii.

DATES: This rule is effective December 1, 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. 08–155, adopted October 3, 2008, and released October 7, 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 information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Hawaii, is amended by adding DTV channel 22 and removing DTV channel 9 at Honolulu.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–25957 Filed 10–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2246; MB Docket No. 08–139; RM–11469]

Television Broadcasting Services; Bainbridge, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by New Age Media of Tallahassee License, LLC (''New Age''), licensee of station WTLH–DT, to substitute DTV channel 50 for post-transition DTV channel 49 at Bainbridge, Georgia.

DATES: This rule is effective December 1, 2008.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–139, adopted October 3, 2008, and released October 7, 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 information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Georgia, is amended by adding DTV channel 50 and removing DTV channel 49 at Bainbridge.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–25956 Filed 10–30–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2233; MB Docket No. 08–156; RM–11480]

Television Broadcasting Services; La Crosse, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by WXOW–WQOW Television, Inc. (''WXOW–WQOW''), permittee of station WXOW–DT, to substitute DTV channel 48 for post-transition DTV channel 14 at La Crosse, Wisconsin.

DATES: This rule is effective December 1, 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. 08–156, adopted October 1, 2008, and released October 6, 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 information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Wisconsin, is amended by adding DTV channel 48 and removing DTV channel 14 at La Crosse.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–25954 Filed 10–30–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 212
Friday, October 31, 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 HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2008–0115]

Privacy Act of 1974: Implementation of Exemptions; United States Coast Guard Courts Martial Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security/United States Coast Guard Courts Martial Records System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0115, by one of the following methods:

- *Federal e-Rulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax*: 1–866–466–5370.
- *Mail*: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues, please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/United States Coast Guard (USCG) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records pertaining to courts martial records regarding USCG military personnel.

As part of its efforts to streamline and consolidate its record systems, DHS is establishing a component system of records under the Privacy Act (5 U.S.C. 552a) for USCG that deals with courts martial records. This records system will allow DHS/USCG to collect and maintain records regarding military justice administration and the documentation of DHS/USCG courts martial. In this notice of proposed rulemaking, DHS now is proposing to exempt DHS/USCG Courts Martial Records, in part, from certain provisions of the Privacy Act.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/USCG Courts Martial Records. Some information in DHS/USCG Courts Martial Records relates to official DHS national security, law enforcement, and intelligence activities. These exemptions are needed to protect information relating to DHS/USCG activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS/USCG's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/USCG Courts Martial Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph ''12'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

12. The Department of Homeland Security/United States Coast Guard Courts Martial Records System of Records consists of electronic and paper records and will be used by DHS/USCG. DHS/USCG Courts Martial Records System of Records is a repository of information held by DHS/USCG in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. DHS/USCG Courts Martial Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS/USCG and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (2) of the Privacy Act, this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: October 22, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25966 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0107]

Privacy Act of 1974: Implementation of Exemptions; U.S. Immigration and Customs Enforcement Trade Transparency Analysis and Research (TTAR) System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is giving concurrent notice of a new system of records pursuant to the Privacy Act of 1974 for the U.S. Immigration and Customs Enforcement Trade Transparency Analysis and Research (TTAR) system and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of

criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0107 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax*: 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, e-mail: *ICEPrivacy@dhs.gov,* or Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Transparency Analysis and Research (TTAR) system of records is maintained for the purpose of enforcing criminal laws pertaining to trade by examining U.S. and foreign trade data to identify anomalies in patterns of trade that may indicate trade-based money laundering or other import-export crimes that ICE is responsible for investigating. TTAR contains trade data collected by other federal agencies and foreign governments, and financial data collected by U.S. Customs and Border Protection (CBP) and the U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN).

ICE uses the Data Analysis and Research Trade Transparency System (DARTTS), a software application and data repository, to conduct analysis of TTAR data. DARTTS does not seek to predict future behavior or ''profile'' individuals, *i.e.*, look for individuals or entities who meet a certain pattern of behavior that has been pre-determined to be suspect. Instead, it analyzes and identifies trade and financial transactions that are statistically anomalous. Investigators gather additional facts, verify the accuracy of the DARTTS data, and use their judgment and experience to determine if the anomalous transactions are in fact suspicious and warrant further investigation. Not all anomalies lead to formal investigations. DARTTS can also identify links (relationships) between individuals and/or entities based on commonalities, such as identification numbers, addresses, or other information. These commonalities in and of themselves are not suspicious, but in the context of additional information they sometimes help investigators to identify potentially criminal activity and identify other suspicious transactions, witnesses, or suspects.

II. Privacy Act

In this notice of proposed rulemaking, DHS now is proposing to exempt TTAR, in part, from certain provisions of the Privacy Act. The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency. The Privacy Act also allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a notice of proposed rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for TTAR. Some information in TTAR relates to official DHS national security, law enforcement, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of border management and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for the Department's TTAR System is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to Part 5, add the following new paragraph 12 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

12. The Trade Transparency Analysis and Research (TTAR) System consists of electronic and paper records and will be used by the Department of Homeland Security (DHS). TTAR is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and

intelligence activities. TTAR contains information that is collected by other federal and foreign government agencies and may contain personally identifiable information.

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: October 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25972 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1155; Directorate Identifier 2008–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive comments on this proposed AD by December 15, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax*: 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial

Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1155; Directorate Identifier 2008–NM–146–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Boeing analysis determined that the existing wire installation of the auxiliary hydraulic pump for Model 717–200 airplanes is routed within the ''tire burst'' area. Replacing the components in the wire assembly of the auxiliary hydraulic pump with new components, and routing the wire assembly installation outside of the tire burst area, will minimize the possibility of wire damage and electrical arcing to the center wing fuel tank. A tire burst when the main landing gear (MLG) is in the retracted position might cause damage to the wire assembly of the auxiliary hydraulic pump and subsequent electrical arcing, creating the potential of an ignition source in the center wing tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 717–29A0009, dated July 31, 2008. The service bulletin describes procedures for modifying the wire installation of the auxiliary hydraulic pump in the right wheel well of the MLG. The modification includes replacing the components in the wire assembly of the auxiliary hydraulic pump with new components, and routing the wire assembly installation outside of the tire burst area.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–1155; Directorate Identifier 2008–NM–146–AD.

Comments Due Date

(a) We must receive comments by December 15, 2008.

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

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

Compliance

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

Installation/Re-Routing

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

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on October 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25991 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1143; Directorate Identifier 2008–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. The existing AD currently requires replacing brackets that hold the P5 panel to the airplane structure, the standby compass bracket assembly, the generator drive and standby power module, and the air conditioning module. The existing AD also currently requires, among other actions, inspecting for wire length and for damage of the connectors and the wire bundles, and doing applicable corrective actions if necessary. This proposed AD would require an additional operational test of the P5–14 panel. This proposed AD results from a report of an electrical burning smell in the flight compartment. We are proposing this AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight; and to ensure proper operation of the passenger oxygen system. If an improperly functioning passenger oxygen system goes undetected, the passenger oxygen mask could fail to deploy and result in possible incapacitation of passengers during a depressurization event.

DATES: We must receive comments on this proposed AD by December 15, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1143; Directorate Identifier 2008–NM–136–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On May 8, 2006, we issued AD 2006–10–17, amendment 39–14601 (71 FR 28766, May 18, 2006), for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD requires replacing brackets that hold the P5 panel to the airplane structure, the standby compass bracket assembly, the generator drive and standby power module, and the air conditioning module. That AD also requires, among other actions, inspecting for wire length and for damage of the connectors and the wire bundles, and doing applicable corrective actions if necessary. That AD resulted from an electrical burning smell in the flight compartment. We issued that AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight.

Actions Since Existing AD Was Issued

Since we issued AD 2006–10–17, a review of an operator's compliance document revealed that an operational test of only the crew oxygen pressure indication in the P5–14 panel had been done (the passenger oxygen system was not tested). The operator had done the operational test in accordance with Boeing Service Bulletin 737–24A1141, Revision 2, dated December 1, 2005 (referred to as an appropriate source of service information for accomplishing certain actions required by AD 2006–10–17). Paragraph 3.B., ''Work Instructions,'' paragraphs 92 and 93, note (b), of the service bulletin refers to Chapter 35–12–00/501 of 737–600/700/800/900 Airplane Maintenance Manual (AMM) as the appropriate source of service information for accomplishing the operational test on both the passenger oxygen system and crew oxygen pressure indication. However, Chapter 35–12–00/501 describes procedures for an operational test of only the crew oxygen pressure indication. Chapter 35–22–00/501 describes procedures for an operational test of the passenger oxygen system.

If an operational test of the passenger oxygen system in the P5–14 panel is not done, an improperly functioning passenger oxygen system could go undetected and result in the failure of the passenger oxygen mask to deploy and possible incapacitation of passengers during a depressurization event.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008. The inspections, replacements, wiring changes, and corrective actions specified in Revision 3 of service bulletin are essentially identical to those specified in Revision 2 of the service bulletin. Revision 3 clarifies the Accomplishment Instructions, changes airplane operators (no additional airplanes have been added to the Effectivity of the service bulletin), and corrects typographical errors, including the incorrect AMM reference described previously. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–10–17 and would retain the requirements of the existing AD. This proposed AD would also require doing an additional operational test of the P5–14 panel and accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 740 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 333 airplanes of U.S. registry.

For all airplanes, the required inspection, replacements, and wiring change that are required by AD 2006–10–17 and retained in this proposed AD take about 16 or 18 work hours per airplane (depending on airplane configuration), at an average labor rate of $80 per work hour. Required parts would cost about $10,231 or $11,139 per airplane (depending on the kit). Based on these figures, the estimated cost of the replacements and inspections required by this proposed AD for U.S. operators is between $3,833,163 and $4,188,807, or between $11,511 and $12,579 per airplane.

For certain airplanes, the modification of the generator drive and standby power module assembly that is required by AD 2006–10–17 and retained in this proposed AD takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. The airplane manufacturer states that it will supply required parts to operators at no cost. Based on these figures, the estimated cost of this modification proposed by this AD is $160 per airplane.

For certain other airplanes, the modification of the air conditioning module assembly that is required by AD 2006–10–17 and retained in this proposed AD takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. The airplane manufacturer states that it will supply required parts to operators at no cost. Based on these figures, the estimated cost of this modification proposed by this AD is $80 per airplane.

For certain airplanes, the new proposed action would take about 21 or 23 work hours per airplane depending on the airplane configuration, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $1,680 or $1,840 per airplane, depending on the airplane configuration.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14601 (71 FR 28766, May 18, 2006) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–1143; Directorate Identifier 2008–NM–136–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 15, 2008.

Affected ADs

(b) This AD supersedes AD 2006–10–17.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008.

Unsafe Condition

(d) This AD results from a report of an electrical burning smell in the flight compartment. We are issuing this AD to prevent wire bundles from contacting the overhead dripshield panel and modules in the P5 overhead panel, which could result in electrical arcing and shorting of the electrical connector and consequent loss of several critical systems essential for safe flight; and to ensure proper operation of the passenger oxygen system. If an improperly functioning passenger oxygen system goes undetected, the passenger oxygen mask could fail to deploy and result in possible incapacitation of passengers during a depressurization event.

Compliance

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

Requirements of AD 2006–10–17

Inspection/Replacements/Wiring Changes/ Corrective Actions

(f) Within 36 months after June 22, 2006 (the effective date of AD 2006–10–17), do the actions in paragraphs (f)(1) through (f)(5) of this AD by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 2, dated December 1, 2005, except as provided by paragraph (i) of this AD. Any applicable corrective actions must be done before further flight.

(1) Replace the five brackets that hold the P5 panel to the airplane structure with new brackets;

(2) Do a general visual inspection for wire length and damage of the connectors and the wire bundles, and applicable corrective actions;

(3) Make wiring changes;

(4) Replace the standby compass bracket assembly with a new assembly; and

(5) Replace the stud assemblies with new assemblies.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(g) Actions done before June 22, 2006, in accordance with Boeing Alert Service Bulletin 737–24A1141, Revision 1, dated December 23, 2004, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Concurrent Requirements

(h) Before or concurrently with the requirements of paragraph (f) of this AD, do the applicable action specified in Table 1 of this AD.

TABLE 1—CONCURRENT REQUIREMENTS

For airplanes identified in Boeing Component Service Bulletin—	Action—
(1) 233A3205–24–01, dated July 26, 2001	Modify the generator drive and standby power module assembly in accordance with the Accomplishment Instructions of the Service Bulletin.
(2) 69–37319–21–02, Revision 1, dated August 30, 2001	Modify the air conditioning module assembly in accordance with the Accomplishment Instructions of the Service Bulletin.

New Actions Required by This AD

New Service Bulletin Revision

(i) As of the effective date of this AD, use only the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008, to do all the applicable actions required by paragraph (f) of this AD.

Additional Operational Test

(j) For airplanes on which the actions required by paragraph (f) of this AD have been done in accordance with Boeing Service Bulletin 737–24A1141, Revision 2, dated December 1, 2005, before the effective date of this AD: Within 12 months after the effective date of this AD, do an operational test of the P5–14 panel in accordance with paragraphs 3.B.92. and 3.B.93., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–24A1141, Revision 3, dated February 20, 2008.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) AMOCs approved previously in accordance with AD 2006–10–17 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on October 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25990 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1141; Directorate Identifier 2008–NM–025–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During removal of forward and aft wing links, corrosion has been found on the wing links and the wing link attachment bolts in areas that are not readily accessible during the currently required Maintenance Review Board Report (MRBR) zonal inspections or Corrosion Prevention and Control Programme (CPCP) inspections. If left uncorrected, such corrosion could adversely affect the structural integrity of the wing to fuselage joint.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 1, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1141; Directorate Identifier 2008–NM–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0303, dated December 14, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During removal of forward and aft wing links, corrosion has been found on the wing links and the wing link attachment bolts in areas that are not readily accessible during the currently required Maintenance Review Board Report (MRBR) zonal inspections or Corrosion Prevention and Control Programme (CPCP) inspections. If left uncorrected, such corrosion could adversely affect the structural integrity of the wing to fuselage joint.

For this reason, this Airworthiness Directive (AD) requires repetitive detailed visual inspections at the forward and aft wing links and wing link attachment bolts for signs of corrosion, replacement of corroded nuts and bolts and repair of any defects.

The MRBR and CPCP will be amended to include the repeat inspections. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

The manufacturer has issued BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–203, dated May 7, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,600.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2008–1141; Directorate Identifier 2008–NM–025–AD.

Comments Due Date

(a) We must receive comments by December 1, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes and Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category, all models, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

During removal of forward and aft wing links, corrosion has been found on the wing links and the wing link attachment bolts in areas that are not readily accessible during the currently required Maintenance Review Board Report (MRBR) zonal inspections or Corrosion Prevention and Control Programme (CPCP) inspections. If left uncorrected, such corrosion could adversely affect the structural integrity of the wing to fuselage joint.

For this reason, this Airworthiness Directive (AD) requires repetitive detailed visual inspections at the forward and aft wing links and wing link attachment bolts for signs of corrosion, replacement of corroded nuts and bolts and repair of any defects.

The MRBR and CPCP will be amended to include the repeat inspections.

Actions and Compliance

(f) Unless already done, do the following actions: Before accumulating 48 months on the wing link since new, or within 48 months of a wing link being repaired in accordance with a BAE Systems (Operations) Ltd. or EASA approved repair scheme, or within 24 months after the effective date of this AD, whichever occurs latest, and thereafter at intervals not to exceed 48 months, inspect the wing links in accordance with paragraph 2.C. of BAE Systems (Operations) Ltd. Inspection Service Bulletin ISB.53–203, dated May 7, 2007.

(1) If any corrosion is found on bolts or nuts, replace the affected bolts and nuts with airworthy parts before next flight in accordance with the service bulletin.

(2) If any corrosion to the wing links is found during an inspection, repair before further flight in accordance with a method approved in accordance with EASA (or its delegated agent).

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–114, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the

FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0303, dated December 14, 2007, and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–203, dated May 7, 2007, for related information.

Issued in Renton, Washington, on October 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25999 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1142; Directorate Identifier 2008–NM–060–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model MU–300–10 Airplanes and Model 400 and 400A Series Airplanes; and Raytheon (Mitsubishi) Model MU–300 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain BEECH Model 400, 400A, and MU–300–10 airplanes. The existing AD currently requires installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. This proposed AD would add airplanes to the applicability of the existing AD. This proposed AD results from reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. We are proposing this AD to prevent sudden shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

DATES: We must receive comments on this proposed AD by December 15, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1142; Directorate Identifier 2008–NM–060–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 23, 1996, we issued AD 96–03–07, amendment 39–9504 (61 FR 5275, February 12, 1996), for certain BEECH Model 400, 400A, and MU–300–10 airplanes. That AD requires installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. That AD resulted from reports of incomplete latching of the existing latching adjustment mechanism and cracked reinforcement assemblies. We issued that AD to prevent such shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 96–03–07, we have determined that the same unsafe condition addressed in AD 96–03–07 could exist on Raytheon (Mitsubishi) Model MU–300 airplanes. Therefore, these additional airplanes must be added to the applicability of AD 96–03–07.

Relevant Service Information

We have reviewed Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002. The actions described in Revision 2 of the service bulletin are essentially the same as those specified in Beechcraft Service Bulletin 2536, Revision 1, dated April 1995 (we referred to Revision 1 as the appropriate source of service information for doing the actions required by AD 96–03–07). Revision 2 adds airplanes and certain kit numbers. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 96–03–07 and would retain the requirements of

the existing AD. This proposed AD would also require the existing actions for additional airplanes.

Change to Existing AD

This proposed AD would retain all of the requirements of AD 96–03–07. Since AD 96–03–07 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 96–03–07	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).

We revised manufacturer/model designations in the applicability of this proposed AD to correspond to designations published in the most recent type certificate data sheets for the affected models. The manufacturer/model designations differ in the referenced service bulletin.

Clarification of Service Bulletin Note

Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, includes a note in the Accomplishment Instructions to inform operators to contact Raytheon ''should any difficulty be encountered'' in accomplishing the service bulletin. We have included Note 1 in this proposed AD to clarify that any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance under the provisions of paragraph (h) of this proposed AD.

Costs of Compliance

The actions specified by this proposed AD were previously required by AD 96–03–07, which was applicable to approximately 121 airplanes. The actions required by that AD take about 24 work hours per airplane at $80 per work-hour. Required parts cost up to $7,433 per airplane. Based on these figures, we estimate the cost of the current requirements of that AD on U.S. operators to be up to $1,131,713, or $9,353 per airplane. In consideration of the compliance time and effective date of AD 96–03–07, we assume that operators of the 121 airplanes subject to that AD have already initiated the required actions. The proposed AD would add no new costs associated with those airplanes.

This proposed AD would be applicable to approximately 76 additional airplanes. The existing actions required by this proposed AD would take about 24 work hour per airplane. The manufacturer has updated the cost of required parts; the required parts now cost up to $24,474 per airplane. Based on the figures discussed above, we estimate the current costs of the existing actions required by this proposed AD on U.S. operators of the additional airplanes to be up to $2,005,944. This figure is based on assumptions that no operator of these additional airplanes has yet done any of the proposed requirements of this AD, and that no operator would do those actions in the future if this AD were not adopted.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–9504 (61 FR 5275, February 12, 1996) and adding the following new airworthiness directive (AD):

Raytheon Aircraft Company (Formerly Beech) and Hawker Beechcraft Corporation (Formerly Raytheon Aircraft Company, formerly Beech Aircraft Corporation): Docket No. FAA–2008–1142; Directorate Identifier 2008–NM–060–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 15, 2008.

Affected ADs

(b) This AD supersedes AD 96–03–07.

Applicability

(c) This AD applies to the airplanes specified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Manufacturer	Model	Serial Nos.
Hawker Beechcraft	Model 400 airplanes	RJ–1 through RJ–65 inclusive.
Hawker Beechcraft	Model 400A airplanes	RK–1 through RK–93 inclusive.
Hawker Beechcraft	Model MU–300–10 airplanes	A1001SA through A1011SA inclusive.

TABLE 1—APPLICABILITY—Continued

Manufacturer	Model	Serial Nos.
Raytheon (Mitsubishi)	Model MU–300 airplanes	A003SA through A091SA inclusive.

Unsafe Condition

(d) This AD results from reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. We are issuing this AD to prevent sudden shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

Compliance

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

Restatement of the Requirements of AD 96–03–07

(f) For Hawker Beechcraft Model MU–300–10 airplanes and Model 400 and 400A series airplanes: Within 200 hours time-in-service after March 13, 1996 (the effective date of AD 96–03–07), install an improved adjustment mechanism on the flightcrew seat, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Beechcraft Service Bulletin SB 2536, Revision 1, dated April 1995; or Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002.

Existing Requirements for Additional Airplanes

(g) For Raytheon (Mitsubishi) Model MU–300 airplanes: Within 200 flight hours or 12 months after the effective date of this AD, whichever occurs first, install an improved adjustment mechanism on the flightcrew seats, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002.

Note 1: A note in the Accomplishment Instructions of Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, instructs operators to contact Raytheon if any difficulty is encountered while accomplishing the actions specified in that service bulletin. However, any deviation from the instructions provided in Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, must be approved as an alternative method of compliance (AMOC) under paragraph (h) of this AD.

Alternative Methods of Compliance

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on October 21, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26000 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130342–08]

RIN 1545–BI10

Infrastructure Improvements Under Section 897

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: This document describes issues that the IRS and the Treasury Department are considering addressing, in a notice of proposed rulemaking, under section 897 of the Internal Revenue Code (Code) regarding the definition of an interest in real property. The notice of proposed rulemaking would address certain rights granted by a governmental unit that are related to the lease, ownership, or use of real property. This document also invites comments from the public regarding these contemplated rules. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by January 29, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–130342–08), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–130342–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–130342–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposals, Jeffrey P. Cowan at (202) 622–3850; concerning submissions, Richard A. Hurst at (202) 622–7180 (TDD Telephone) (not toll-free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Overview

This document describes issues that the IRS and the Treasury Department are considering addressing, in a notice of proposed rulemaking, regarding the definition of an interest in real property within the meaning of section 897(c) of the Code. The notice of proposed rulemaking would address certain rights granted by a governmental unit that are related to the lease, ownership, or use of toll roads, toll bridges, and certain other physical infrastructure. The proposed regulations would amend the § 1.897–1 regulations.

Transactions at Issue

In a typical transaction at issue, a domestic partnership (DP) leases or purchases from an unrelated party infrastructure assets and any land underlying these infrastructure assets (together, specified infrastructure) within the United States. The DP's partners include domestic corporations with foreign shareholders. Examples of specified infrastructure include a toll road or toll bridge.

Often, as a condition to operating the specified infrastructure and to collecting tolls for its use, DP is also required to obtain a governmental license, permit, franchise, or other similar right (governmental permit). The DP may also own or acquire property that would be used in the trade or business of operating the specified infrastructure, such as signs, snow plows, and electronic sensors.

The physical attributes of the specified infrastructure, for example, a relatively narrow roadway, and terms and conditions related to the specified infrastructure, for example, that the

lessee is required to maintain and operate a roadway, mean that in many cases there may practically be no potential alternative commercial uses for the specified infrastructure. In those cases, the value of the leasehold interest in the specified infrastructure derives from the right to charge and collect tolls.

Background

Section 897(a)(1) of the Code treats the gain or loss of a nonresident alien or foreign corporation from the disposition of a U.S. real property interest (USRPI) as if the taxpayer were engaged in a trade or business in the United States, and as if such gain or loss were effectively connected with such trade or business under sections 871(b) or 882. In general, a USRPI includes an interest in real property located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in a domestic corporation unless the taxpayer establishes that the corporation was at no time a U.S. real property holding corporation (USRPHC) within the period described in section 897(c)(1)(A)(ii). Section 897(c)(1)(A).

Real property includes land and unsevered natural products of the land, improvements, and personal property associated with the use of real property. Section 1.897–1(b)(1). Section 1.897–1(b)(1) provides that local law definitions will not be controlling for purposes of determining the meaning of the term ''real property'' as it is used under section 897 and the regulations thereunder. The regulations define an ''improvement'' as a building, any other inherently permanent structure, or the structural components of either. Section 1.897–1(b)(3). For this purpose an inherently permanent structure includes any property not otherwise described in § 1.897–1(b)(3) that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Further, § 1.897–1(b)(3)(iii)(B) provides that an inherently permanent structure includes, for example, pavements and bridges.

The Code defines an ''interest in real property'' to include fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon. Section 897(c)(6)(A). Section 1.897–1(c)(1) further provides that the term USRPI also includes any interest, other than an interest solely as a creditor, in real property located in the United States or the Virgin Islands. Section 1.897–1(d)(2)(i) provides that an interest in real property other than an interest solely as a creditor includes any direct or indirect right to share in the appreciation in the value, or in the gross or net proceeds or profits generated by, the real property.

A USRPHC is generally defined as a corporation the fair market value of whose USRPIs equals or exceeds 50 percent of the fair market value of its worldwide interests in real property, including its USRPIs, plus its other assets which are used or held for use in a trade or business. Section 897(c)(2). For this purpose, assets used or held for use in a trade or business include, among other things, certain intangible property described in § 1.897–1(f)(1)(ii).

For purposes of determining whether any corporation is a USRPHC, assets held by a partnership, trust, or estate are generally treated as held proportionately by its partners or beneficiaries. Section 897(c)(4)(B) and § 1.897–2(e)(2). The interest in the entity itself is disregarded when a proportionate share of the entity's assets are attributed to the interest-holder. Section 1.897–2(e)(2). Further, any asset treated as held by a partner or beneficiary by reason of this rule which is used or held for use by the partnership, trust, or estate in a trade or business is treated as so used or held by the partner or beneficiary. Section 897(c)(4)(B) and § 1.897–2(e)(2). The proportionate ownership rules of Section 897(c)(4)(B) and § 1.897–2(e)(2) apply successively upward through a chain of ownership. Section 1.897–2(e)(2).

Explanation of Contemplated Regulations

The IRS and the Treasury Department are aware that in the transactions at issue taxpayers may be taking the position that for purposes of section 897 the governmental permit is not a USRPI within the meaning of section 897(c). Instead, these taxpayers may take the position that the governmental permit is an asset used or held for use in a trade or business. Further, these taxpayers may take the position that a significant portion of the fair market value of a DP's assets is allocable to the governmental permit rather than to the assets comprising the specified infrastructure.

As noted in the Background section, under section 897(c)(2), a corporation is a USRPHC only if the fair market value of its USRPIs equals or exceeds 50 percent of the fair market value of its USRPIs plus its interests in real property located outside the United States, plus any other of its assets which are used or held for use in a trade or business. Therefore, if the fair market value of the governmental permit were treated as an asset used or held for use in a trade or business, and not a USRPI, the governmental permit would be taken into account in the denominator, but not the numerator, of the calculation provided for in section 897(c)(2) in order to determine whether any domestic corporation that is a partner in a DP is a USRPHC. Accounting for the governmental permit in this manner for purposes of the section 897(c)(2) calculation reduces the likelihood that a domestic corporation to which such a right was attributed under section 897(c)(4)(B) would be treated as a USRPHC under section 897(c)(2).

The IRS and the Treasury Department, however, are of the view that in some of the transactions at issue the governmental permit may properly be characterized as a USRPI. Accordingly, the IRS and the Treasury Department are considering issuing proposed regulations regarding the definition of an interest in real property that would address certain licenses, permits, franchises, or other similar rights granted by a governmental unit (including, for purposes of section 897, an agency or instrumentality thereof) that are related to the value of the use or ownership of an interest in real property. The proposed regulations would address how the fair market value of such licenses, permits, franchises, or other similar rights should be taken into account when determining the fair market value of a corporation's USRPIs and interests in real property located outside the United States under section 897(c)(2).

Proposed Effective Date

The IRS and the Treasury Department anticipate that the proposed regulations would apply for transactions occurring on or after the date of publication in the **Federal Register** as final or temporary regulations. No inference is intended as to how these arrangements are treated or characterized under current law.

Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. All comments will be available for public inspection and copying.

The IRS and Treasury Department specifically request comments on:

1. The scope of this regulatory project, the types of licenses, permits, franchises, or other similar rights granted by a governmental unit with respect to specified infrastructure that might be treated as related to the value

of the lease, ownership, or use of an interest in real property, and what characteristics should be taken into account in making that determination.

2. Whether this regulatory project should address the allocation of the consideration paid for the lease or purchase of a specified infrastructure and the license, permit, franchise, or other similar right to operate that specified infrastructure for purposes of determining the fair market value of such property.

In regard to the allocation of purchase price, comments are also sought as to whether, for purposes of allocating the consideration paid for a lease of the specified infrastructure and the license, permit, franchise, or other similar right to operate that specified infrastructure, the length of the lease (including whether the lease is for the useful life of the property) should be taken into account.

L.E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–26074 Filed 10–30–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–164370–05]

RIN 1545–BF27

Section 108(e)(8) Application to Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the application of section 108(e)(8) of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide guidance regarding the determination of discharge of indebtedness income of a partnership that transfers a partnership interest to a creditor in satisfaction of the partnership's indebtedness (debt-for-equity exchange). The proposed regulations also provide that section 721 applies to a contribution of a partnership's recourse or nonrecouse indebtedness by a creditor to the partnership in exchange for a capital or profits interest in the partnership. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 29, 2009. Outlines of topics to be discussed at the public hearing scheduled for February 19, 2009, must be received by January 27, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–164370–05), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–164370–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–164370–05). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Megan A. Stoner, Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 622–3070; concerning submission of comments, the hearing, and/or placed on the building access list to attend the hearing, Richard Hurst, (202) 622–2949 (TDD Telephone) (not toll-free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR Part 1 under sections 108 and 721 of the Code relating to the application of section 108(e)(8) to partnerships.

Section 108(e)(8) was amended by section 896 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1648), to include discharges of partnership indebtedness occurring on or after October 22, 2004. Prior to the amendment, section 108(e)(8) only applied to discharges of corporate indebtedness. Section 108(e)(8), as amended, provides that for purposes of determining income of a debtor from discharge of indebtedness (COD income), if a debtor corporation transfers stock or a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of a partnership, any COD income recognized under section 108(e)(8) shall be included in the distributive shares of the partners in the partnership immediately before such discharge.

Explanation of Provisions

1. Valuation of Partnership Interest Transferred in Satisfaction of Partnership Debt

Section 108(e)(8) provides that for purposes of determining COD income of a debtor partnership, the partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the interest transferred to the creditor. The amount by which the indebtedness exceeds the fair market value of the partnership interest transferred is the amount of COD income required to be included in the distributive shares of the partners in the debtor partnership immediately before the discharge.

The IRS and the Treasury Department believe that provided certain requirements are satisfied, it is appropriate to allow the partnership and the creditor to value the partnership interest transferred to the creditor in a debt-for-equity exchange (debt-for-equity interest) based on liquidation value. For this purpose, liquidation value equals the amount of cash that the creditor would receive with respect to the debt-for-equity interest if, immediately after the transfer, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles associated with the partnership's operations) for cash equal to the fair market value of those assets, and then liquidated. If a partnership maintains capital accounts in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv), the amount by which the creditor's capital account is increased as a result of the debt-for-equity exchange will equal the fair market value of the indebtedness exchanged. See § 1.704–1(b)(2)(iv)(*b*) and (*d*).

Accordingly, the proposed regulations provide that for purposes of applying section 108(e)(8), the fair market value of a debt-for-equity interest is the liquidation value of that debt-for-equity interest, if (i) the debtor partnership determines and maintains capital accounts of its partners in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv), (ii) the creditor, debtor partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange, (iii) the debt-for-equity

exchange is an arm's-length transaction, and (iv) subsequent to the debt-for-equity exchange, neither the partnership redeems nor any person related to the partnership purchases the debt-for-equity interest as part of a plan at the time of the debt-for-equity exchange which has as a principal purpose the avoidance of COD income by the partnership. If these conditions are not satisfied, all of the facts and circumstances are considered in determining the fair market value of the debt-for-equity interest for purposes of applying section 108(e)(8).

2. Application of Section 721 to Debt-for-Equity Exchanges

Generally, when property is transferred as payment on indebtedness (or in satisfaction thereof), gain or loss on the property is recognized. The IRS and the Treasury Department, however, believe that in the case of a debt-for-equity exchange, the nonrecognition rule of section 721 generally should apply to the creditor's contribution of partnership indebtedness (other than unpaid interest or accrued original issue discount) to the partnership in exchange for the partnership interest. Such a rule is consistent with the policies underlying section 721 to defer the recognition of gain or loss where persons join together to conduct joint business (including investment). Accordingly, the proposed regulations provide that with certain exceptions, section 721 applies to debt-for-equity exchanges.

The proposed regulations provide that section 721 does not apply to the transfer of a partnership interest to a creditor in satisfaction of a partnership's indebtedness for unpaid rent, royalties, or interest on indebtedness (including accrued original issue discount). Moreover, these proposed regulations do not supersede the rules under section 453B relating to dispositions of installment obligations. A separate guidance project addresses the application of section 721 to a partnership interest transferred in connection with the performance of services. See proposed regulations regarding partnership equity for services (70 FR 29675) (May 24, 2005).

3. Creditor's Basis in Partnership Interest

Because the proposed regulations provide that section 721 applies to a debt-for-equity exchange, the basis of the creditor's interest in the partnership is determined under section 722. Section 722 provides that the basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution, increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

The IRS and the Treasury Department believe that a creditor should not recognize a loss in a debt-for-equity exchange subject to section 721 in which the liquidation value of the debt-for-equity interest is less than the outstanding principal balance of the indebtedness. Rather, the creditor's basis in the debt-for-equity interest received in the debt-for-equity exchange that is subject to section 721 will be increased by the adjusted basis of the indebtedness. The IRS and the Treasury Department request comments on alternative approaches.

4. Creditor's Holding Period in Partnership Interest

Section 1223(1) provides, in general, that in determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which the taxpayer held the property exchanged, if the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as the property exchanged. Because the basis in the debt-for-equity interest received in a debt-for-equity exchange that is subject to section 721 is the same as the creditor's basis in the debt under section 722, the debt-for-equity interest includes the creditor's holding period in the indebtedness under section 1223(1).

5. Request for Comments

The IRS and the Treasury Department realize that there are other issues relating to debt-for-equity exchanges that are not addressed in these proposed regulations. One issue not addressed is whether any special allocation rules of COD income should apply where partnership indebtedness owed to a preexisting partner is satisfied with the transfer of a partnership interest. Another issue is whether COD income arising from a debt-for-equity exchange should be treated as a first-tier item under § 1.704–2(f)(6) for purposes of the minimum gain chargeback rules. A third issue is how the rules in the noncompensatory partnership options regulations relating to convertible debt interact with the rules in these proposed regulations under section 108(e)(8). The IRS and the Treasury Department request comments on these issues as well as other issues not addressed in these proposed regulations.

Proposed Effective Date

These regulations are proposed to apply to debt-for-equity exchanges occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 19, 2009, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, all visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by January 27, 2009. Outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January

27, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Megan A. Stoner of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.108–8 is added to read as follows:

§ 1.108–8 Indebtedness satisfied by partnership interest.

(a) *In general.* For purposes of determining income of a debtor from discharge of indebtedness (COD income), if a debtor partnership transfers a capital or profits interest in the partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness (a debt-for-equity exchange), the partnership is treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the partnership interest.

(b) *Determination of fair market value*—(1) *In general.* For purposes of paragraph (a) of this section, the fair market value of a partnership interest transferred by a debtor partnership to a creditor in satisfaction of the debtor partnership's indebtedness (debt-for-equity interest) is the liquidation value of the debt-for-equity interest, where liquidation value equals the amount of cash that the creditor would receive with respect to the debt-for-equity interest if, immediately after the transfer, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles associated with the partnership's operations) for cash equal to the fair market value of those assets and then liquidated, if—

(i) The debtor partnership determines and maintains the capital accounts of its partners in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv);

(ii) The creditor, debtor partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange;

(iii) The debt-for-equity exchange is an arm's-length transaction; and

(iv) Subsequent to the debt-for-equity exchange, neither the partnership redeems nor any person related to the partnership purchases the debt-for-equity interest as part of a plan at the time of the debt-for-equity exchange which has as a principal purpose the avoidance of COD income by the partnership.

(2) *Exception.* If the requirements in paragraph (b)(1) of this section are not satisfied, all the facts and circumstances will be considered in determining the fair market value of a debt-for-equity interest for purposes of paragraph (a) of this section.

(c) *Example.* The following example illustrates the provisions of this section:

Example. (i) AB partnership has $1,000 of outstanding indebtedness owed to C. In an arm's-length transaction, C agrees to cancel the $1,000 indebtedness in exchange (debt-for-equity exchange) for an interest (debt-for-equity interest) in AB. AB's partnership agreement provides that its partners' capital accounts will be determined and maintained in accordance with the capital accounting rules in § 1.704–1(b)(2)(iv). The fair market value of the $1,000 indebtedness is $700 at the time of the debt-for-equity exchange. Under § 1.704–1(b)(2)(iv)(*b*), C's capital account is increased by $700 as a result of the debt-for-equity exchange. This amount equals the liquidation value of C's debt-for-equity interest, which is the amount of cash that C would receive with respect to that interest if AB partnership sold all of its assets for cash equal to the fair market value of those assets and then liquidated. C, AB partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of C's debt-for-equity interest ($700) for purposes of determining the tax consequences of the debt-for-equity exchange. Subsequent to the debt-for-equity exchange, neither AB partnership redeems nor any person related to AB partnership purchases C's debt-for-equity interest as part of a plan at the time of the debt-for-equity exchange which has as a principal purpose the avoidance of COD income by AB partnership.

(ii) Because the requirements in paragraph (b)(1) of this section are satisfied, the fair market value of C's debt-for-equity interest in AB partnership for purposes of determining AB partnership's COD income is the liquidation value of C's debt-for-equity interest, or $700. Accordingly, AB partnership is treated as satisfying the $1,000 indebtedness with $700 under section 108(e)(8).

(d) *Effective/applicability date.* This section applies to debt-for-equity exchanges occurring on or after the date that these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 1.721–1 is amended by adding paragraph (d) to read as follows:

§ 1.721–1 Nonrecognition of gain or loss on contribution.

* * * * *

(d) *Debt-for-equity exchange*—(1) *In general.* Except as otherwise provided in section 721 and the regulations under section 721, and notwithstanding § 1.108–8(a), section 721 applies to a contribution of a partnership's recourse or nonrecourse indebtedness by a creditor to the debtor partnership in exchange for a capital or profits interest in the partnership.

(2) *Exception.* Section 721 does not apply to the transfer of a partnership interest to a creditor in satisfaction of a partnership's recourse or nonrecourse indebtedness for unpaid rent, royalties, or interest on indebtedness (including accrued original issue discount). For rules applicable to a determination of whether a partnership interest transferred to a creditor is treated as payment of interest or accrued original issue discount, see §§ 1.446–2(e) and 1.1275–2(a), respectively.

(3) *Effective/applicability date.* This paragraph (d) applies to debt-for-equity exchanges occurring on or after the date that these regulations are published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–25851 Filed 10–30–08; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–9]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of time to file comments.

SUMMARY: The Copyright Office is extending the time in which comments may be filed in response to its notice of

proposed rulemaking regarding new fees for registration of claims, special services and Licensing Division services, and new statutory fees and fees for certain other services that the Office is proposing to submit to Congress.

DATES: Comments should be in writing and received on or before November 24, 2008.

ADDRESSES: If hand delivered by a private party, an original and ten copies of any comment should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5:00 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4:00 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 401, James Madison Building, 101 Independence Avenue, SE., Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya M Sandros, General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel, Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On October 14, 2008, the Copyright Office published a notice of proposed rulemaking to inform the public that the Copyright Office of the Library of Congress is considering adoption of new fees for registration of claims, special services and Licensing Division services, and that the Office intends to submit a schedule of proposed new statutory fees and fees for certain other services to Congress. (73 FR 60658 October 14, 2008)

The NPRM contained three charts which included a comparison of existing fees and the proposed new fees. Due to a printing problem, a substantial portion of the text was missing from the charts entitled ''Special services'' and ''Licensing Division services,'' and a correction document was issued by the Federal Register on October 23, 2008. (73 FR 63111) The Office is now extending the comment deadline to provide a 30 day period to consider all the fees, including those published for the first time in the correction.

The cost study which provides the basis for the proposed fee changes is posted on the Office's website at: *http://www.copyright.gov/reports/fees2008.pdf*.

Dated: October 28, 2008.

Tanya Sandros,

General Counsel.

[FR Doc. E8–26063 Filed 10–30–08; 8:45 am]

BILLING CODE 1410–30–S

Notices

Federal Register
Vol. 73, No. 212
Friday, October 31, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections as required by the Paperwork Reduction Act for 1995. *Comments are requested concerning:* (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

ADDRESSES: Send comments via e-mail at *jltaylor@usaid.gov* or mail comments to: Jacqueline L. Taylor, Procurement Analyst, Office of Acquisition and Assistance, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 (202) 712–0492.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–New.

Form No.: N/A.

Title: Offeror Information for Personal Services Contracts.

Type of Review: New.

Purpose: The purpose of this information collection is to obtain information from the offeror for personal service contract positions. This information will include administrative information, work experience, education and qualifications in addition to offerors certification.

Annual Reporting Burden

Respondents: 5,000.

Total Annual Responses: 10,000.

Total Annual Hours Requested: 5,000 hours.

Dated: October 22, 2008.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E8–25838 Filed 10–30–08; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0073]

Sirex Woodwasp; Availability of an Environmental Assessment and Finding of No Significant Impact

Correction

In notice document E8–24889 beginning on page 62246 in the issue of Monday, October 20, 2008, make the following corrections:

1. On page 62246, in the third column, in the first full paragraph, in the fourth line, footnote reference ''11'' should read ''1''.

2. On the same page, in the same column, in footnote 11, the Web address ''http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–'' should read ''http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0073''.

3. On the same page, in the same column, in the footnotes, footnote reference ''11'' should read ''1''.

[FR Doc. Z8–24889 Filed 10–30–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meetings; Black Hills National Forest Advisory Board and Recreation Resource Advisory Committee (Federal Lands Recreation Enhancement Act, Title VIII, Pub. L. 108–447)

AGENCY: Black Hills National Forest, Rocky Mountain Region.

ACTION: Notice of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (Board), acting in its capacity as the Black Hills National Forest Recreation Resource Advisory Committee (RRAC), will meet in Rapid City, SD. The purposes of the meetings are to consider recommending a business plan and annual, weekly, and commercial vehicle, special recreation permit fees. These fees would include annual permits purchased by the public to use the Black Hills National Forest's designated, motorized, off-highway vehicle trail system. The fees would be established pursuant to Public Law No: 108–447 (H.R. 48 118), September 8, 2004, Consolidated Appropriations Act, 2005, Title VIII Federal Lands Recreation Enhancement Act, Section 803 Recreation Fee Authority, (h) Special Recreation Permit Fee.

DATES: The Board, also meeting as the RRAC, will meet on November 19, 2008, and again on January 7, 2009, from 1 p.m. to 5 p.m. Board/RRAC meetings will only be held if a quorum of members is present.

ADDRESSES: The Advisory Board/RRAC meetings will be at locations to be determined and announced in the news media and on the Black Hills National Forest Web page at *http://www.fs.fed.us/r2/blackhills.* Send written comments to Craig Bobzien, Designated Federal Official, 1019 N. 5th St., Custer, SD, 57730 or e-mail *twillems@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tom Willems, Black Hills National Forest Travel Planner at 605–673–9217 or *twillems@fs.fed.us.*

SUPPLEMENTARY INFORMATION: A travel planning subcommittee of the Board will make a presentation to the Board/RRAC on November 19, summarizing public comment on the business plan and proposed fees and explaining to the Board/RRAC the content of the business plan, the proposed special recreation permit fees, and other matters relating to the proposal, including how fees would apply to obtaining formal law enforcement officers to enforce rules on the designated trail system. The Board/RRAC will meet November 19 to listen to the subcommittee's presentation, then to discuss the business plan and the proposed special recreation permit fees, and to take additional public comment if time allows, at the discretion of the Chair, and for 15 minutes at the end of the meeting in any event. The Chair may ask for comments from the public at any time during the meetings. People wishing to speak at the meetings are asked to sign in at the door with a name and contact information. Public comments will be taken based first-come, first-served at the discretion of the Chair. The public may provide written comments to the Committee staff at any time from now until January 2, 2009. Check for the status of the meetings, final agendas, the proposed business plan and the special recreation permit fee proposal at: *http://www.fs.fed.us/r2/blackhills.* The National Forest Advisory Board sitting as the Black Hills National Forest Recreation Resource Advisory Committee is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: October 27, 2008.

Craig Bobzien,

Designated Federal Officer, Black Hills National Forest Advisory Board and Recreation Resource Advisory Committee.

[FR Doc. E8–26033 Filed 10–30–08; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from Procurement List.

SUMMARY: The Committee is proposing to delete products previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: November 30, 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.

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 product(s) and/or service(s) 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 products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products:

Clipboard Folder, Recycled

NSN: 7520–01–484–1746—Clipboard Folder, Recycled

NPA: Industries of the Blind, Inc., Greensboro, NC

Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY

EcoLab Water Soluble Cleaners/Detergents

NSN: 7930–01–436–8012—EcoLab Water Soluble Cleaners/Detergents

NPA: Assoc f/t Blind&Visually Impaired & Goodwill Ind. of Greater Rochester, Rochester, NY

Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX

Kimberly M. Zeich,

Deputy Executive Director.

[FR Doc. E8–26042 Filed 10–30–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from Procurement List.

SUMMARY: This action deletes from the Procurement List products previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* December 1, 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:

Deletions

On 08/01/2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 F.R. 44960–44961) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer 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 additional reporting, recordkeeping or other compliance requirements for small entities.

2. 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 products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Belt, Aircraft Safety

NSN: 1680–00–163–1570—Belt, Aircraft Safety.
NPA: Arizona Industries for the Blind, Phoenix, AZ.
Contracting Activity: Defense Supply Center Richmond, Richmond, VA.

Paper Cutter, Rotary Precision

NSN: 7520–01–483–8898—Paper Cutter, Rotary Precision.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Flashlight

NSN: 6230–01–513–3276—Flashlight, Aluminum, 3D, Blue.
NPA: Central Association for the Blind & Visually Impaired, Utica, NY.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Kimberly M. Zeich,

Deputy Executive Director.

[FR Doc. E8–26043 Filed 10–30–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 0810151367–81368–01]

Solicitation of Applications for the National Technical Assistance, Training, Research and Evaluation Program: Economic Development Research Project: Regional Innovation Systems

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Economic Development Administration (EDA) is resoliciting applications for a regional innovation systems research project under FY 2009 National Technical Assistance, Training, Research and Evaluation program (NTA Program) funding. Under a FY 2008 competition, EDA funded two projects under the regional innovation systems research topic. EDA now is interested in making another award exploring regional innovation systems in an additional geographic location.

DATES: To be considered timely, a completed application, regardless of the format in which it is submitted, must be either: (1) Received by the EDA representative listed below under ''Paper Submissions'' no later than November 17, 2008 at 5 p.m. Eastern Time; (2) transmitted and time-stamped at *http://www.grants.gov* no later than November 17, 2008 at 5 p.m. Eastern Time; or (3) electronically transmitted to the e-mail address of the Program Analyst listed below under ''Electronic Submissions'' no later than November 17, 2008 at 5 p.m. Eastern Time. Any application received or transmitted, as the case may be, after 5 p.m. Eastern Time on November 17, 2008 will be considered non-responsive and will not be considered for funding. Please see the instructions below under ''Application Submission Requirements'' for information regarding format options for submitting completed applications. Because this announcement solicits applications for a single research project and it is anticipated that a single award will be made, EDA expects to notify the applicant selected for investment assistance under this notice by December 26, 2008. The selected applicant should expect to receive project funding within thirty days of EDA's notification of selection.

Applicants choosing to submit completed applications electronically through *http://www.grants.gov* should follow the instructions set out below under ''Electronic Access'' and in section IV.D. of the complete Federal Funding Opportunity (FFO) announcement for this request for applications.

Application Submission Requirements: On October 1, 2008, EDA published a notice in the **Federal Register** (73 FR 57049) to introduce its new, streamlined *Application for Investment Assistance* (Form ED–900), which consolidates all EDA-specific requirements into a single application form. Applicants are advised to read carefully the instructions contained in section IV. of the complete FFO announcement for this request for applications, which sets out EDA's updated application requirements. The FFO announcement may be accessed on EDA's Internet Web site at *http://www.eda.gov/InvestmentsGrants/FFON.xml* and at *http://www.grants.gov*.

Applications may be submitted in either of two formats: (i) In paper format at the address provided below under ''Paper Submissions;'' or (ii) electronically in accordance with the procedures provided on *http://www.grants.gov* or submitted via e-mail to the address provided below under ''Electronic Submissions.'' EDA will not accept facsimile transmissions of applications. The content of the application is the same for paper submissions as it is for electronic submissions. A complete application must contain all the items that comprise a complete application package, as set out in section IV.A. of the FFO announcement. Regardless of the method of transmission, applicants are solely responsible for ensuring that EDA receives complete, accurate, and timely applications.

You may obtain a paper application package by contacting the designated point of contact listed below under **FOR FURTHER INFORMATION CONTACT.** Applicants applying electronically through *http://www.grants.gov* may access the application package by following the instructions provided on *http://www.grants.gov*. Additionally, applicants may download a complete application package from EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Application.xml*.

Paper Submissions: Full or partial paper (hardcopy) applications submitted under the NTA program may be hand-delivered or mailed to: FY 2009 Economic Development Research Project Competition: Regional Innovation Systems, Kerstin Millius, Program Analyst, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7009, Washington, DC 20230.

Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery. Applicants may wish to use a guaranteed overnight delivery service.

Electronic Submissions: Applicants have two options for submitting electronically: Through *http://www.grants.gov* or via e-mail. Applicants may submit applications in accordance with the instructions provided at *http://www.grants.gov* and in section IV.D. of the applicable FFO announcement. EDA strongly encourages that applicants not wait until the application closing date to begin the application process through *http://www.grants.gov*. Applicants also may submit applications by e-mail. Completed applications may be e-mailed to Kerstin Millius, Program Analyst, at *kmillius@eda.doc.gov*. The preferred file format for electronic attachments is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Microsoft Excel formats.

FOR FURTHER INFORMATION CONTACT: For additional information on the NTA

Program or to obtain a paper application package for this notice, please contact Kerstin Millius, Program Analyst, via e-mail at *kmillius@eda.doc.gov* (preferred) or by telephone at (202) 482–3280.

For additional information regarding electronic submissions, please access the following link for assistance in navigating *http://www.grants.gov* and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under *Frequently Asked Questions,* try consulting the *Applicant's User Guide* at *http://www.grants.gov/applicants/app_help_reso.jsp*. If you still cannot find an answer to your question, contact *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726. The hours of operation for *http://www.grants.gov* are Monday–Friday, 7 a.m. to 9 p.m. Eastern Time (except for federal holidays).

Additional information about EDA and its NTA Program may be obtained from EDA's Web site at *http://www.eda.gov*. The complete FFO announcement for this request for applications is available at *http://www.grants.gov* and at *http://www.eda.gov/InvestmentsGrants/FFON.xml*.

SUPPLEMENTARY INFORMATION:

Background Information: On March 14, 2008, EDA published an FFO and accompanying **Federal Register** notice (73 FR 13844) to solicit applications for funding under its NTA Program that addressed one or more of the following three projects: (a) Regional innovation systems; (b) urban economic development policy; and (c) global economic development strategy. The deadline for receipt of applications closed May 9, 2008 at 5 p.m. Eastern Time. After completing its review of submitted applications, EDA funded projects under each research topic, including two awards under the regional innovation systems project. One successful recipient was located in West Virginia and the other was in California, and both of these successful projects highlight regional economies in those respective areas.

EDA now is interested in making another award exploring regional innovation systems in an additional geographic location. Through this notice, EDA solicits applications for funding that address only the regional innovation systems research topic. EDA advises applicants to read carefully the description of the research project as EDA has provided information on important requirements that were not included in the earlier FFO announcement and March 14, 2008 **Federal Register** notice.

EDA will not review applications submitted under the previous announcement. Therefore, to be considered for funding under this notice, all applications must comply with the new program and application requirements as set out in the complete FFO announcement for this request for applications. Any applicant that submitted an application under the previous FFO announcement must submit a new and complete application if it wishes to be considered for funding. If an applicant submits more than one application under this announcement, EDA will evaluate only the first application received and will consider subsequent applications non-responsive.

There are five deliverables under this competitive solicitation: (1) A comparative analysis; (2) research and analysis of best-practice case-studies; (3) development of a communication and dissemination strategy for project findings; (4) a practitioner-accessible report or equivalent document that presents project findings; and (5) delivery of the practitioner-accessible report or equivalent document to EDA in a format suitable for posting on EDA's Web site and of all data and other materials used in the analysis. Any information disseminated to the public under this request for applications is subject to the Information Quality Act (Pub. L. No. 106–554). Applicants are required to comply with the Information Quality Guidelines issued by EDA pursuant to the Information Quality Act, which are designed to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by EDA. These guidelines are available on EDA's Web site at *http://www.eda.gov*.

Electronic Access: The complete FFO announcement for this FY 2009 Economic Development Research Project competition is available at *http://www.grants.gov and at http://www.eda.gov/InvestmentsGrants/FFON.xml*.

Funding Availability: EDA is operating with appropriations made available under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law No. 110–329 (September 30, 2008). This Act makes available appropriations in an amount based on FY 2008 funding levels that are pro-rated through March 6, 2009 for the economic development assistance programs authorized by the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA) and for the Trade Adjustment Assistance for Firms program authorized under the Trade Act of 1974, as amended (19 U.S.C. 2341–2355, 2391). At FY 2008 funding levels, EDA estimates that the regional innovation systems project will be funded in an amount ranging from $200,000 to $300,000.

Statutory Authority: The authority for the NTA Program is PWEDA. The specific authority for the Economic Development Research Projects Program is section 207 of PWEDA (42 U.S.C. 3147), which authorizes EDA to make grants for grants for training, research, and technical assistance. EDA's regulations at 13 CFR parts 300–302 and subpart A of 13 CFR part 306 set forth the general and specific regulatory requirements applicable to the NTA Program. EDA's regulations are codified at 13 CFR chapter III. The regulations and PWEDA are accessible on EDA's Internet Web site at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml*.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.312, Economic Development—Research and Evaluation.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and recipients of EDA investment assistance include a District Organization; an Indian Tribe or a consortium of Indian Tribes; a State; a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; an institution of higher education or a consortium of institutions of higher education; and a public or private non-profit organization or association.

Project Period: Typically, EDA gives a recipient one year from the award date to complete the scope of work, which consists of research and associated research activities, composing the resulting report, and presenting the report to EDA senior management. A typical research project period begins with an initial meeting between the recipient and EDA staff to ensure that all parties agree with the project terms. After the initial meeting, the recipient generally submits a final work plan to EDA staff for review and approval. Throughout the project period there will be regular contact between EDA staff and the recipient for updates on project progress. Also, interim progress reports will be required throughout the project period. The schedule of interim progress reports will be determined subsequent to award.

Typically, the recipient submits a draft research report to EDA at least 90 days before the end of the project period for EDA's review. If the draft research report is approved, EDA will approve publication of a final research report, and the recipient will brief EDA senior management on research methods and report results.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty percent, as determined by EDA, based on the relative needs of the region in which the project will be located. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). The Assistant Secretary of Commerce for Economic Development has the discretion to establish a maximum EDA investment rate of up to one-hundred percent where the project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

EDA will consider the nature of the contribution (cash or in-kind), the amount of any matching share funds, and fairly assess any in-kind contributions in evaluating the cost to the Government and the feasibility of the project budget (*see* the ''Evaluation Criteria'' section below). While cash contributions are preferred, in-kind contributions, fairly evaluated by EDA, may provide the non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144) and section III.B. of the FFO announcement for this request for applications. In-kind contributions, which may include assumptions of debt and contributions of space, equipment, and services, are eligible to be included as part of the non-federal share of eligible project costs if they meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the entire project period, will be available as needed, and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications under the NTA Program are not subject to Executive Order 12372, *''Intergovernmental Review of Federal Programs.''*

Evaluation and Selection Procedures: To apply for an award under this request for applications, an eligible applicant must submit a completed application package to EDA before the closing date and time specified in the ''**DATES**'' section of this notice, and in the manner provided in section IV. of the applicable FFO announcement. Any application received or transmitted, as the case may be, after 5 p.m. Eastern Time on November 17, 2008 will not be considered for funding. Applications that do not include all items required or that exceed the page limitations set forth in section IV.B. of the FFO announcement will be considered non-responsive and will not be considered by the review panel. Because this announcement solicits applications for a single research project and it is anticipated that a single award will be made, EDA expects to notify the applicant selected for funding by December 26, 2008. Unsuccessful applicants will be notified that their applications were not selected for funding. Applications that meet all the requirements will be evaluated by a review panel comprised of at least three EDA staff members, all of whom will be full-time federal employees.

Evaluation Criteria: The review panel will evaluate the applications and rate and rank them using the following criteria of approximate equal weight:

(1) Conformance with EDA's statutory and regulatory requirements, including the extent to which the proposed project satisfies the award requirements set out below and as provided in 13 CFR 306.2:

- Strengthens the capacity of local, State, or national organizations and institutions to undertake and promote effective economic development programs targeted to regions of distress;
- Benefits distressed regions; and
- Demonstrates innovative approaches to stimulate economic development in distressed regions.

(2) The degree to which an EDA investment will have strong organizational leadership, relevant project management experience, and a significant commitment of human resources talent to ensure the project's successful execution (*see* 13 CFR 301.8(b)).

(3) The ability of the applicant to implement the proposed project successfully (*see* 13 CFR 301.8).

(4) The feasibility of the budget presented.

(5) The cost to the Federal Government.

Also, the addition of research and project data to an existing Web site or the design of a companion Web site designed to disseminate research results and provide links to data encapsulated in the report free of charge is preferred.

Selection Factors: The Assistant Secretary, as the Selecting Official, expects to fund the highest ranking applications, as recommended by the review panel, submitted under this request for applications. However, if EDA does not receive satisfactory applications, the Assistant Secretary may not make any selection. Depending on the quality of the applications received, the Assistant Secretary may select more than one application for one research project and make no selection for another research project. Also, he may select an application out of rank order for the following reasons: (1) A determination that the selected application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147); (2) the applicant's performance under previous awards; or (3) the availability of funding.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

Administrative and national policy requirements for all Department of Commerce awards are contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*, published in the **Federal Register** on February 11, 2008 (73 FR 7696). This notice may be accessed through the **Federal Register** Internet Web site at *http://www.gpoaccess.gov/fr/retrieve.html*, making sure the radial button for the correct **Federal Register** volume is selected (in this instance, 2008 **Federal Register**, Vol. 73), entering the **Federal Register** page number provided in the previous sentence (7696), and clicking the ''Submit'' button.

Paperwork Reduction Act

This request for applications contains collections of information subject to the requirements of the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by OMB under the control number 0610–0094. The use of Forms SF–424 (*Application for Financial Assistance*), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C (*Budget Information—Construction Programs*), SF–424D (*Assurances—Construction Programs*), and SF–LLL *Disclosure of Lobbying Activities* (SF–LLL) has been approved under OMB control numbers 4040–0004, 4040–0006,

4040–0007, 4040–0008, 4040–0009, and 0348–0046, respectively. The use of Form CD–346 has been approved under OMB control number 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866, ''*Regulatory Planning and Review*.''

Executive Order 13132

It has been determined that this notice does not contain ''policies that have Federalism implications,'' as that phrase is defined in Executive Order 13132, ''*Federalism*.''

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and none has been prepared.

Dated: October 27, 2008.

Otto Barry Bird,

Chief Counsel, Economic Development Administration.

[FR Doc. E8–26029 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on August 14, 2008, 10 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction.
2. Update on recent proposed License Exception Intra-Company Transfer rule published October 3, 2008 and October 27, 2008, public meeting.
3. Report on Inaugural ETRAC (Emerging Technologies and Research Technical Advisory Committee).
4. Recap of Update 2008 and reminder of Mandatory use of SNAP–R for license submittal.
5. Report of Composite Working group and ECCN review subgroup.
6. Public comments from teleconference and physical attendees.
7. Election of new MTAC Chairman and any other business.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than November 13, 2008.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 17, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 27, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–26062 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–825]

Polyethylene Terephthalate Film, Sheet, and Strip from Thailand: Amended Final Determination of Sales at Less Than Fair Value

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

EFFECTIVE DATE: October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce (the Department), 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Amendment to the Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on September 17, 2008, the Department made a final determination of sales at less than fair value (LTFV) in the investigation of polyethylene terephthalate film, sheet, and strip (PET Film) from Thailand. The final determination was subsequently released to all parties in the proceeding, and published in the **Federal Register** on September 24, 2008. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand*, 73 FR 55043 (September 24, 2008) (*Final Determination*).

On September 25, 2008, and pursuant to 19 CFR 351.224(c)(2), we received a timely–filed allegation from respondent Polyplex Thailand Public Company Limited and its U.S. affiliate Polyplex Americas, Ltd. (collectively, Polyplex), that the Department made ministerial errors with respect to its final dumping margin calculation. *See* Letter from Polyplex to the Department, regarding ''Ministerial Error Comments,'' dated September 25, 2008. On September 30, 2008, we received comments from Petitioners[1] regarding the ministerial errors alleged by Polyplex. *See* Letter from Petitioners to the Department, regarding the ministerial errors alleged by Polyplex, dated September 30, 2008.

After analyzing the respondent's ministerial error comments and considering Petitioners' comments

[1] DuPont Teijin Films, Mitsubishi Polyester Film of America, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively, Petitioners).

thereof, we have determined, in accordance with 19 CFR 351.224(e), that we made certain ministerial errors with respect to our final dumping margin calculation for Polyplex and have revised our margin calculation accordingly. Specifically, the Department inadvertently did not convert domestic inventory carrying cost (DINVCARU) into U.S. dollars after re–calculating this expense for the *Final Determination* to account for certain changes to Polyplex's reported costs. *See Final Determination*, 73 FR at 55044. The Department has revised its calculation of DINVCARU to convert this expense into U.S. dollars as intended. Additionally, the Department inadvertently failed to account for certain income accounts reported in Polyplex Americas, Ltd.'s Saracote division when calculating the U.S. indirect selling expense (ISE) ratio. *See* ''Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Thailand'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated September 17, 2008, at Comment 5. For this amended final determination, the Department has revised its calculation of the U.S. ISE ratio to account for certain income expenses recorded by the Saracote division of Polyplex Americas, Ltd. as intended. Finally, the Department inadvertently failed to include bad debt expenses in its calculation of the U.S. ISE ratio for Polyplex. See Decision Memorandum at Comment 5. For a detailed discussion of the ministerial errors alleged by Polyplex as well as the Department's analysis, *see* Memorandum from the Team to Richard O. Weible, entitled, ''Ministerial Error Allegation in the Final Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from Thailand,'' dated October 24, 2008. Correcting these errors results in a revised margin of 5.36 percent for Polyplex as indicated in the ''Amended Cash Deposits'' section below.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of polyethylene terephthalate film, sheet, and strip from Thailand for Polyplex.

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all–others rate shall be an amount equal to the weighted–average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins and any margins determined entirely under section 776 of the Act. For this amended final determination, we have calculated an amended margin for Polyplex that is above de minimis and will use this rate as the all–others rate as no other producer was investigated.

Therefore, for purposes of determining the all–others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the amended weighted–average dumping margin calculated for Polyplex of 5.36 percent.

Amended Cash Deposits

The revised weighted–average dumping margins are as follows:

Manufacturer/Exporter	Final Determination Weighted-Average Margin Percentage	Amended Final Weighted–Average Percentage
Polyplex	6.07	5.36
All–Others	6.07	5.36

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of polyethylene terephthalate film, sheet, and strip from Thailand. CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This amended determination is issued and published pursuant to section 735(e) and 777(i)(1) of the Act.

Dated: October 24, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–26035 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

DATES: *Effective Date:* October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2008, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). See Initiation of Five-year (''Sunset'') Review, 73 FR 37411 (July 1, 2008). Based on an adequate response from the domestic interested party and an inadequate response from the respondent interested party, the Department is conducting an expedited sunset review to determine whether revocation of the antidumping order would lead to the continuation or recurrence of dumping, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations. See Letters to the International Trade Commission regarding the Sunset Reviews of the AD/CVD Orders Initiated in July 2007, dated July 22, 2008, and August 20, 2008.

Extension of Time Limits for Final Results

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the 120-day time period for making its determination by not more than 90 days, if it determines that a review is extraordinarily complicated. As set forth in section 751(c)(5)(C)(i) of

the Act, the Department may treat a sunset review as extraordinarily complicated if there are a large number of issues, as is the case in this proceeding. In particular, Petitioners filed comments raising various issues, some of which are complex and require additional time for analysis. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(i) of the Act, that the first sunset review of frozen fish fillets from Vietnam is extraordinarily complicated, as the Department must consider numerous arguments presented in Petitioners' July 31, 2008, substantive response. Based on the timing of the case, the final results of this expedited sunset review cannot be completed within the statutory time limit of 120 days. Accordingly, the Department is extending the time limit for the completion of the final results by 40 days, from October 29, 2008, to no later than December 8, 2008, in accordance with section 751(c)(5)(B) of the Act.

This notice is published pursuant to sections 751(c)(5)(B) and 777(i)(1) of the Act.

Dated: October 20, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–25728 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Polychloroprene Rubber from Japan: Final Results of Changed Circumstances Review and Determination to Revoke Antidumping Duty Finding in Part

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

SUMMARY: On March 11, 2008, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review with intent to revoke, in part, the antidumping duty (AD) finding on polychloroprene rubber from Japan. *See Polychloroprene Rubber From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Antidumping Duty Finding in Part*, 73 FR 12954 (March 11, 2008) (*Initiation and Preliminary Results*). We are now revoking this AD finding, in part, with regard to certain polychloroprene rubber products from Japan, as described in the ''Scope of Changed Circumstances Review'' section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the AD finding with respect to the imports of such products.

EFFECTIVE DATE: October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone (202) 482–0780 or (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2008, the Department received a request on behalf of the petitioner, DuPont Performance Elastomers L.L.C. (DPE),[1] for revocation in part of the AD finding on polychloroprene rubber from Japan pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (the Act). DPE requested partial revocation of the AD finding with respect to certain polychloroprene rubber products, listed below in the section entitled ''Scope of Changed Circumstances Review.'' In its January 23, 2008, submission, DPE stated that it no longer has any interest in antidumping relief from imports of such polychloroprene rubber from Japan. On March 11, 2008, the Department published a notice of initiation and preliminary results of a changed circumstances review with intent to revoke, in part, the AD finding on polychloroprene rubber from Japan. *See Initiation and Preliminary Results*. The Department provided interested parties with a deadline to submit written comments no later than 30 days after the date of publication of the *Initiation and Preliminary Results*. *Id.* The Department received timely comments on the Department's preliminary results from The Adhesive and Sealant Council, Inc. (ASC), Clifton Adhesive, Inc. (Clifton), Royal Adhesives & Sealants, LLC (RAS), Showa Denko America, Inc. (Showa Denko), The W.W. Henry Company (W.W. Henry), and DPE. The comments by these parties are discussed below in the section entitled ''Summary of Comments Received.''

Scope of Changed Circumstances Review

The merchandise subject to DPE's request and covered by this changed circumstances review is polychloroprene rubber from Japan with solid polychloroprenes that are dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer content in the 1.0 percent to 5.0 percent range (this category does *not* include aqueous chloroprene/methacrylic acid dipolymer dispersion products or solvent solutions of chloroprene/methacrylic acid dipolymers). This changed circumstances review covers polychloroprene rubber from Japan meeting the specifications as described above. Effective upon publication of these final results of changed circumstances review in the **Federal Register**, the amended scope of the AD finding will read as identified in the ''Scope of the Finding (As Amended By These Final Results of Changed Circumstances)'' section of this notice.

Summary of Comments Received

After the Department issued its *Initiation and Preliminary Results*, we received timely comments from several parties. On April 3, 2008, we received comments from Clifton, a domestic industrial user of polychloroprene rubber, and on April 8, 2008, we received comments from ASC, an international trade association representing 125 manufacturers of adhesives and sealants. Both Clifton and ASC argued that the proposed scope amendment by the changed circumstances review would not provide any relief to the affected U.S. industries because their Japanese supplier provides polychloroprene rubber that contains dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer at less than 1.0 percent. Clifton and ASC contended that imports of this product would still be within the proposed amended scope of the AD finding. Therefore, they proposed that the excluded subject merchandise include ''dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer content of less than 5.0 percent.''

On April 9, 2008, the Department received comments from Showa Denko, a Japanese producer and U.S. importer of polychloroprene rubber. Showa Denko indicated that DPE had requested this changed circumstances review

[1] DPE is the sole petitioner in this antidumping proceeding. *See Polychloroprene Rubber From Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Finding*, 69 FR 64276 (November 4, 2004). DPE has been the sole U.S. producer of polychloroprene rubber since 1998, when Bayer Group closed its polychloroprene rubber plant in Houston, Texas. *See* Polychloroprene Rubber from Japan, Inv. No. AA-1921-129 (Second Review), U.S. ITC Pub. 3786 (June 2005), at 4-5.

because DPE has ceased domestic production of its product, Neoprene AF™, which falls within the category of products for which DPE has requested revocation. Showa Denko also pointed out that its product that competed with Neoprene AF™ has a methacrylic acid comonomer content of less than 1.0 percent. Therefore, Showa Denko argued, in order to make possible antidumping duty–free imports from Japan of a product that is competitive with DPE's former product, the revocation needs to include dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer content of less than 1.0 percent. As such, Showa Denko recommended the range for methacrylic acid comonomer content be changed to read ''0.1 percent to 5.0 percent.''

The Department also received comments from RAS, a domestic manufacturer of, *inter alia*, adhesives and sealants, and W.W. Henry, a domestic manufacturer of flooring adhesives and installation products. The comments submitted by RAS and W.W. Henry were timely received and subsequently placed on the record by the Department on August 20, 2008. *See* Memorandum to File, ''Polychloroprene Rubber from Japan: Changed Circumstances Review: Comments from Royal Adhesives and Sealants and The W.W. Henry Company,'' dated August 20, 2008. In their comments, both parties stated their understanding that a true replacement for the products to be removed from the scope of the AD finding (*i.e.* solid polychloroprenes that are dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer content in the 1.0 percent to 5.0 percent range) actually contains 0.2–0.3 percent methacrylic acid comonomer content and thus requested that the scope of formulation definition be modified accordingly in the final AD finding.

On April 14, 2008, and again on August 25, 2008, DPE responded to the above comments. DPE partially agreed that, in general, the scope language needed to be expanded from its January 23, 2008 request to allow certain Japanese products to be excluded from the AD finding. However, DPE disagreed with the comments from ASC, Clifton, and Showa Denko that the lower limit be set below 0.2 percent. Rather, DPE agreed with the comments from RAS and W.W. Henry that the range for methacrylic acid comonomer content should be amended to read ''0.2 percent to 5.0 percent,'' rather than ''1.0 percent to 5.0 percent,'' as stated in the *Initiation and Preliminary Results*. According to DPE, this change will have the desired effect of excluding the specified Japanese products from the scope of the AD finding, while still providing the antidumping relief necessary to the continued health and well–being of the domestic industry.

Analysis of Comments Received

The commenting parties are in agreement with DPE's original request to amend the scope language to exclude certain polychloroprene rubber from the AD finding. The comments received only address the issue of the specific language to be used in making this exclusion. Clifton and ASC recommend that the range for methacrylic acid comonomer content be changed to read ''less than 5.0 percent,'' rather than ''1.0 percent to 5.0 percent.'' Showa Denko recommends that the range be ''0.1 percent to 5.0 percent.'' RAS, W.W. Henry, and DPE all recommend that the range be ''0.2 percent to 5.0 percent.''

In initiating this review, the Department found that, as the sole domestic producer accounting for substantially all of the production of the domestic like product, DPE's expression of no interest in the continued application of the AD finding on certain polychloroprene rubber was sufficient to both initiate and preliminarily revoke, in part, the AD finding as it relates to imports of certain polychloroprene rubber products from Japan. *See Initiation and Preliminary Results*. DPE, as the sole domestic producer, is the only party in this proceeding in a position to determine the products for which it no longer has any interest in being provided antidumping relief. Therefore, the Department finds that it will make DPE's recommended changes to the exclusion language found in the *Initiation and Preliminary Results*.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made a change in these final results from our *Initiation and Preliminary Results*. We are incorporating DPE's requested amendment to the scope language regarding the subject merchandise excluded from this AD finding. Specifically, for these final results, the methacrylic acid comonomer content range will be expanded from ''1.0 percent to 5.0 percent'' to ''0.2 percent to 5.0 percent.''

Scope of the Finding (As Amended By These Final Results of Changed Circumstances)

The merchandise covered are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.41.00, 4002.49.00, and 4003.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although HTSUS item numbers are provided for convenience and customs purpose, the Department's written description of the scope remains dispositive.

The following types of polychloroprene rubber from Japan are excluded from the scope: (1) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and methacrylic acid, where the dispersion has a pH of 8 or lower (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of these polychloroprenes that contain comonomers other than methacrylic acid); (2) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and 2,3–dichlorobutadiene–1,3 modified with xanthogen disulfides, where the dispersion has a solids content of greater than 59 percent (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of polychloroprenes that contain comonomers other than 2,3–dichlorobutadiene–1,3); and (3) solid polychloroprenes that are dipolymers of chloroprene and 2,3–dichlorobutadiene–1,3 having a 2,3–dichlorobutadiene–1,3 content of 15 percent or greater (this category is limited to polychloroprenes in solid form and does *not* include aqueous dispersions).

In addition, the following type of polychloroprene rubber is excluded from the scope: solid polychloroprenes that are dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer content in the 0.2 percent to 5.0 percent range (this category does not include aqueous chloroprene/methacrylic acid diploymer dispersion products or solvent solutions of chloroprene/methacrylic acid dipolymers).

Final Results of Review: Partial Revocation of Antidumping Duty Finding

The affirmative statement of no interest by the petitioner concerning certain polychloroprene rubber from Japan, as described herein, constitutes changed circumstances sufficient to warrant revocation of this AD finding in part. The Department has considered the comments found above in making its determination. Therefore, the Department is partially revoking the AD finding with respect to certain polychloroprene rubber from Japan with

regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g). We will instruct the U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain polychloroprene rubber, meeting the specifications indicated above, as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222(g)(4).

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO which may be subject to sanctions.

The Department is issuing this changed circumstances review, partial revocation of the AD finding and notice in accordance with sections 751(b) and (d), 777(i), and 782(h) of the Act and 19 CFR 351.216(e) and 351.222(g).

Dated: October 24, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–26032 Filed 10–30–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Final Results of Fourth New Shipper Reviews

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

EFFECTIVE DATE: October 31, 2008.

SUMMARY: On June 6, 2008, the Department of Commerce (the ''Department'') published the preliminary results of these new shipper reviews (''NSRs'') covering the period January 1, 2007 through July 31, 2007.[1] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of January 1, 2007 July 31, 2007 Semi–Annual New Shipper Reviews*; 73 FR 32292 (June 6, 2008) (''*Preliminary Results*''). Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for these reviews are listed in the ''Final Results of the Reviews'' section below.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

Since the *Preliminary Results*, the following events have occurred. On June 17, 2008, Donguan Mu Si Furniture Co., Ltd. (''Mu Si'') submitted documents to the Department claiming that due to a computational error it had misreported the consumption factor for medium density fiberboard (''MDF'') used to produce cherry veneer nightstands.

On July 7, 2008, we extended the time limit for the completion of the final results of these NSRs until no later than October 24, 2008. *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Extension of Time Limit for Final Results of New Shipper Reviews*; 73 FR 50933 (August 29, 2008).

On July 7, 2008, we received case briefs from Mu Si and the American Furniture Manufacturers Committee for Legal Trade and Vaughan–Bassett Furniture Company Inc. (collectively ''Petitioners''). On July 17, 2008, we received a timely rebuttal brief from Donguan Bon Ten Furniture Co., Ltd. (''Bon Ten'') and Mu Si.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs by parties to these reviews are addressed in the ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China,'' dated October 24, 2008, which is hereby adopted by this notice (''Issues and Decision Memo''). A list of the issues discussed in the Issues and Decision Memo is attached to this notice as an appendix. The Issues and Decision Memo is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests,[2] highboys,[3] lowboys,[4] chests of drawers,[5]

[1] In the initiation notice of the NSRs the Department explained that it was expanding the period of review (''POR''), pursuant to 19 CFR 351.214 (f)(2)(ii), because the sale of the subject merchandise occurred within the POR, but the entry occurred after the normal POR. *See Wooden Bedroom Furniture From the People's Republic of China: Initiation of New Shipper Reviews*, 72 FR 52083 (September 12, 2007). As a result, the POR for these NSRs is January 1 through July 31, 2007.

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

chests,[6] door chests,[7] chiffoniers,[8] hutches,[9] and armoires;[10] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[11] (9) jewelry armoires;[12] (10) cheval mirrors;[13] (11) certain metal parts;[14] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set; and (13) upholstered beds.[15]

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004 and *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Amendment to the Scope: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 54643 (September 9, 2004). *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

[13] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.90.7000.

[15] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

Changes Since the Preliminary Results

Based on our analysis of information on the record of these NSRs, and comments received from the interested parties, we have made the following changes to the margin calculations for Bon Ten and Mu Si.

- We employed facts available in order to calculate Mu Si's per–unit consumption of MDF used to produce cherry veneer nightstands. *See* the ''Facts Available'' section of this notice, below.
- We corrected average unit value calculations for certain factors of production (''FOPs''). See the Issues and Decision Memo at Comment 2 and the memorandum to the file ''New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Surrogate Values for the Final Results'' (''FOP memorandum'') dated October 24, 2008.
- We corrected the calculation of domestic movement expenses. *See* the Issues and Decision Memo at Comment 3 and the FOP memorandum.
- We corrected the conversion of weight measurements for certain FOPs. *See* the Issues and Decision Memo at Comment 4 and the FOP memorandum.
- We recalculated the surrogate financial ratios using the financial statements of four Indian producers of comparable merchandise. *See* the Issues and Decision Memo at Comment 5 and the FOP memorandum.

Facts Available

Sections 776(a)(1) and (2) of the Tariff Act of 1930 as amended (''the Act'') provide that the Department shall apply ''facts otherwise available'' if 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, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the

request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Mu Si claimed that it misreported its consumption factor for MDF used to produce cherry veneer nightstands. Mu Si explained this error and proposed a correction in a submission it made to the Department on June 17, 2008, subsequent to publication of the preliminary results in the **Federal Register**, and again in its case brief. However, Mu Si's proposed correction of the MDF consumption factor is incomplete based on additional evidence on the record.

Given the late stage of the review when Mu Si claimed it misreported MDF consumption (*i.e.* after the preliminary results), the Department was unable to seek additional information from Mu Si to complete the record. Thus, the Department has incomplete information on the record and must rely on facts available to calculate the MDF consumption for control number 2, cherry veneer nightstands. *See* Section 776(a) of the Act. There is no evidence on the record of this segment of the proceeding that Mu Si failed to cooperate during these NSRs, thus the Department has not relied on adverse inferences under section 776(b) of the Act. As facts available, we employed Mu Si's original MDF consumption calculation as corrected for the alleged transposition error with respect to MDF, 12 mm thickness. Please see the Issues and Decision Memo at Comment 5 and the FOP memorandum for further discussion of this issue.

Surrogate Country

In the *Preliminary Results*, we stated that although we preliminarily selected the Philippines as the surrogate country in the on–going administrative review of the wooden bedroom furniture antidumping duty order, there is no information on the record of these NSRs which would enable us to consider the Philippines as a surrogate country. *See Preliminary Results* at 73 FR 32295. As a result, we selected India as the surrogate country. *Id.* Since the *Preliminary Results*, no additional information has been placed on the record of this segment of the proceeding and no interested party has commented on the selection of India as the surrogate country. Therefore, we continue to determine that India is the appropriate surrogate country for the final results of these NSRs.

Separate Rates

The Department found in the preliminary results that Bon Ten and Mu Si demonstrated a lack of *de jure* and *de facto* government control with respect to their export activities, and preliminarily determined they were eligible for separate rates. *See Preliminary Results* at 73 FR 32294–95. No information has been placed on the record of this segment of the proceeding since the preliminary results to contradict our preliminary separate–rates determination. Therefore, for the final results, the Department continues to determine that Bon Ten and Mu Si are eligible for separate rates.

Final Results of the New Shipper Reviews

The Department has determined that the following final dumping margins exist for the period January 1, 2007 through July 31, 2007:

WOODEN BEDROOM FURNITURE FROM THE PRC

Exporter/Producer	Weighted–Average Margin (Percent)
Dongguan Bon Ten Furniture Co., Ltd. / Dongguan Bon Ten Furniture Co., Ltd.	0.00
Dongguan Mu Si Furniture Co., Ltd. / Dongguan Mu Si Furniture Co., Ltd.	33.01

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For customers/importers of the respondents that did not report entered value, we have calculated customer/importer–specific antidumping duty assessment amounts based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in those transactions. For customers/importers of the respondents that reported entered value, we have calculated customer–specific antidumping duty assessment amounts based on customer/importer–specific ad valorem rates in accordance with 19 CFR 351.212(b)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of NSRs.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of NSRs for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: 1) for the exporter/producer combinations listed above, the cash deposit rate will be the rates shown for those companies; 2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate or combination rate published for the most recent period; 3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 216.01 percent; and 4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

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

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

Disclosure

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

We are issuing and publishing these final results and notice in accordance with sections 751(a)(2)(B), 751(a)(2)(C), and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 24, 2008.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

Appendix: Issues Covered in the Issues and Decision Memo

Issue 1: Whether the Department Should Correct a Computational Error Made by Dongguan Mu Si Furniture Co., Ltd. in its calculation of Medium Density Fiberboard Consumption.

Issue 2: Whether the Department Should Correct Average Unit Values (''AUVs'') for Certain Factors of Production (''FOP'').

Issue 3: Whether the Department Should Correct Domestic Movement Expenses.

Issue 4: Whether the Department Should Convert Units of Measure for Certain FOPs.

Issue 5: Whether the Department Should Continue to Use the Financial Statements of 13 Indian Companies to Calculate Surrogate Financial Ratios.

[FR Doc. E8–26036 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: HSRP public meeting will be held November 19–20, 2008. Open public time is from 8 a.m. to 5 p.m. on November 19th and 8 a.m. to 3 p.m. on November 20th.

Location: Westin Harbour Island, Tampa, Florida. 725 S. Harbour Island Boulevard, Tampa, FL 33602; Tel: (813) 229–5000. The times and agenda topics are subject to change. Refer to the HSRP Web site listed below for the most current meeting agenda.

FOR FURTHER INFORMATION CONTACT: Captain Steven Barnum, NOAA, Designated Federal Official (DFO), Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770, Fax: 301–713–4019; e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and public comment periods will be scheduled at various times throughout the meeting. These comment periods will be part of the final agenda that will be published before the meeting date on the HSRP Web site listed above. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 30 copies) should be submitted to the DFO by November 5, 2008. Written comments received by the DFO after November 5, 2008, will be distributed to the HSRP, but may not be reviewed before the meeting date. Approximately 25 seats will be available for the public, on a first-come, first-served basis.

Matters to be Considered: (1) Panel discussion with various stakeholders in the region on the use of and interest in NOAA Navigation Services; (2) Presentation on the Integration of NOAA's PORTS® Data product information with the U.S. Coast Guard Automated Identification System (AIS); (3) Updates on Strategic Plans for the Office of Coast Survey, National Geodetic Survey, and Center for Operational Oceanographic Products and Services; (4) Panel discussion with various stakeholders on Climate and the Coasts and Arctic issues; (5) HSRP facilitated strategic planning session; and (6) public statements.

Dated: October 27, 2008.

Christopher C. Cartwright,

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

[FR Doc. E8–25963 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL54

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (NEFMC), in conjunction with the Mid-Atlantic Fishery Management Council (MAFMC), is scheduling a meeting of its Joint Dogfish Committee, on November 17, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, November 17, 2008, at 7 p.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

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

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

SUPPLEMENTARY INFORMATION: The Dogfish Committee will: (1) Review stock status update; (2) consider the Spiny Dogfish Monitoring Committee's recommendations for management measures for the 2009 fishing year; and (3) develop, for Council consideration and action, a Joint Committee position on management measures for the 2009 fishing year and possibly thereafter.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 28, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–25994 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL55

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee, on November 17–18, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, November 17, 2008 at 10 a.m. and Tuesday, November 18, 2008 at 8 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

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

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

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will elect a committee vice chairman, finalize recommendations for Amendment 3 to the Skate Fishery Management Plan, develop comments on the NMFS Advanced Notice of Proposed Rulemaking concerning National Standard 2, approve five-year research priorities and further develop its operating procedures based on the proceedings of the recent national SSC Workshop and further committee discussion.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 28, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–25995 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL56

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting on November 18–20, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, November 18, 2008 beginning at 9 a.m., and Wednesday, November 19, 2008 beginning at 8:30 a.m. and Thursday, November 20, 2008 beginning at 8 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

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

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

SUPPLEMENTARY INFORMATION:

Tuesday, November 18, 2008

Following introductions and any announcements, the Council will receive a series of brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, NOAA Enforcement and representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission. Following these reports, there will be a review of proposals contained in Draft Amendment 1 to the Consolidated Highly Migratory Fishery Management Plan addressing Essential Fish Habitat. Prior to a lunch break the Council will hold an open comment period during which any interested party may address the Council about fishery management related issues that are otherwise not listed on the agenda. Following the break, the Council's Research Steering Committee will report on its review of the NEFMC's five-year research

priorities, evaluations of several final cooperative research project final reports and possible revisions to the evaluation criteria used to review those reports. The Scientific and Statistical Committee will provide advice to the Council on Amendment 3 to the Northeast Skate Complex Fishery Management Plan (FMP), its recommendations on the NEFMC's five-year research priorities and its comments on the Advanced Notice of Proposed Rulemaking issued by NMFS concerning National Standard 2. The Council will adjourn for the day following a report from the Joint Mid-Atlantic/New England Council Spiny Dogfish Committee. This will be the final meeting to consider Framework Adjustment 2 to the Dogfish FMP, an action that would allow consideration of alternatives to adjust stock status determination criteria. The Council also will consider dogfish management measures for the 2009/10 fishing years and possibly thereafter.

Wednesday, November 19, 2008

The Skate Committee will ask the Council to approve final measures for inclusion in Skate Amendment 3 which will implement annual catch limits and accountability measures as well as an annual review and biennial specification process. The Groundfish Committee will ask for approval of management measures for further development and analysis as part of Amendment 16 to the Northeast Multispecies FMP. This agenda item will continue until the meeting adjourns for the day.

Thursday, November 20, 2008

The Council will address and prioritize management actions for the remainder of 2008 and 2009. This process will be followed by an update from the Habitat Committee on Essential Fish Habitat Omnibus 2. Information provided will include an overview of the vulnerability assessment concerning the adverse impacts of fishing, selected preliminary results, a timeline and discussion of future work. This report will be followed by a presentation on ecosystem considerations relative to the development of fishery management plans and a report on scallop vessel incidental catch of yellowtail flounder. The Scallop Committee will then discuss and approve a response to the most recent NMFS Biological Opinion for the Scallop FMP concerning sea turtle interactions and review a list of alternatives under consideration for Amendment 15 to the Scallop FMP. The Council may narrow the range of measures for inclusion in the action. Finally, the Council will address any other outstanding business prior to adjournment until its next meeting.

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

Special Accommodations

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

Dated: October 28, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–25996 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL53

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) Groundfish Plan Teams will meet in Seattle, WA.

DATES: The meetings will be held November 17–21, 2008. The meetings will begin at 9 a.m. on Monday, November 17, 2008 and continue through Friday, November 21, 2008.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Observer Training Room (GOA Plan Team) and Traynor Room (BS/AI Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, NPFMC, (907) 271–2809.

SUPPLEMENTARY INFORMATION: The plan teams will prepare and review the stock assessments for groundfish fisheries in the BSAI and GOA and recommend catch specifications for 2009/10. Agenda posted on website at: *http://www.fakr.noaa.gov/npfmc/*.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 28, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–25993 Filed 10–30–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0063]

Submission for OMB review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 1, 2008.

Title, Form, and OMB Number: DoD Building Pass Application; DD Form 2249; OMB Number 0704–0328.

Type of Request: Extension.

Number of Respondents: 120,000.

Responses Per Respondent: 1.

Annual Responses: 120,000.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 12,000.

Needs and Uses: This information collection requirement is used by officials of Security Services, Pentagon Force Protection Agency, to maintain a listing of personnel who are authorized a DoD Building Pass. The information collected from the DD Form 2249 is used to verify the need for and to issue a DoD Building Pass to DoD personnel, other authorized U.S. Government personnel, and DoD consultants and experts who regularly work in or require frequent and continuing access to DoD owned or occupied buildings in the National Capital Region.

Affected Public: Individuals or households; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title 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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: October 24, 2008.

Patricia L. Toppings,

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

[FR Doc. E8–26003 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. paragraph 552b, as amended), and 41 CFR paragraph 102–3.150, the Department of Defense announces the following Federal Advisory Committee meetings of the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee will take place.

DATES: November 17, 2008 (0830–1645) and November 18, 2008 (0830–1630).

ADDRESSES: U.S. Nuclear Command and Control System Support Staff, 5210 Leesburg Pike, Skyline 3, Suite 500, Falls Church, VA 22041, November 17 and NSA Headquarters, Ft. Meade, MD, November 18.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

SUPPLEMENTARY INFORMATION:

Purposes of the Meetings: To provide an overview of nuclear personnel expertise, Electro-magnetic pulse protection requirements and plans, weapon system safeguards, cyber threats, NSA NCCS communications studies, cryptographic modernization plans and foreign command and control capabilities.

Agenda

Time	Topic	Presenter
Nov 17, 2008—Pentagon Conference Center		
8:30 am	Administrative Remarks	CAPT Budney.
8:45 am	DSB Study: Nuclear Weapons Personnel Expertise	ADM (ret) Chiles.
9:30 am	DSB Study: EMP	Dr. Miriam Johns/Dr. Joe Braddock.
10:15 am	Break.	
10:30 am	EMP Commission Report	Dr. Bill Graham.
11:15 am	DoD EMP Roadmap	ATSD(NCB)/NM.
12:00 pm	Lunch.	
1:00 pm	Weapon System-level Safeguards—Aircraft	ACC.
1:30 pm	Weapon System-level Safeguards—ICBMs	AFSPC.
2:00 pm	Weapon System-level Safeguards—Submarines	SSP.
2:30 pm	Break.	
2:45 pm	Future NCCS Communications Initiatives	OASD (NII)/CIO.
3:15 pm	Offense-Defense Integration	JFCC–IMD.
3:45 pm	SSBN Security Program	COMSUBFOR.
4:15 pm	Continuing Evaluation Programs (CEP)	JHU/APL.
4:45 pm	Adjourn.	
Nov 18, 2008—Ft Meade (NSA)		
8:30 am	Administrative Remarks	CAPT Budney, USN (NSS).
8:45 am	Cyber Threats to National Security Systems	NSA/NTOC.
9:30 am	National Threat Operations Center (NTOC)	NSA.
10:30 am	Break.	
10:45 am	NSA NC2 Studies (PDM III/PDM II)	Ken Kurz, NSA.
12:00 pm	Lunch.	
1:00 pm	COMSEC Production Facility Tour	NSA.
2:00 pm	Crypto Modernization Plan	NSA.
3:00 pm	Foreign Nuclear Power NC2 Systems	POC: Wes Carr.

Time	Topic	Presenter
3:45 pm	Executive Session.	
4:30 pm	Adjourn.	

Pursuant to 5 U.S.C. paragraph 552b, as amended, and 41 CFR paragraph 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Director, U.S. Nuclear Command and Control System Support Staff, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. paragraph 552b(c)(1).

Committee's Designated Federal Officer: Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041. *William.jones@nss.pentagon.mil.*

Pursuant to 41 CFR paragraphs 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements at any time to the Nuclear Command and Control System Federal Advisory Committee about its mission and functions. All written statements shall be submitted to the Designated Federal Officer for the Nuclear Command and Control System Federal Advisory Committee. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Committee until its next meeting. All submissions provided before that date will be presented to the committee members before the meeting that is subject of this notice. Contact information for the Designated Federal Officer is listed above.

Dated: October 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–25985 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Department of Defense; Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Finance and Accounting Service (DFAS). The publication of PRB membership is required by 5 U.S.C. 4314(C)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, DFAS.

DATES: *Effective Date:* November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Denise Thornburg, DFAS SES Program Manager, Defense Finance and Accounting Service, Arlington, Virginia, (303) 337–3288.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(C)(4), the following executives are appointed to the Defense Finance and Accounting Service PRB: Richard Gustafson, Steve Turner, Nancy Zmyslinski. Executives listed will serve a one-year renewable term, effective November 18, 2008.

Dated: October 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–26001 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2009 Diagnosis Related Group (DRG) Updates

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-Based Payment System in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios, and the Internet address for accessing the updated adjusted standardized amount and DRG relative weights to be used for Fiscal Year (FY) 2009 under the TRICARE DRG-Based Payment System.

DATES: *Effective Dates:* The rates, weights, and Medicare PPS changes which affect the TRICARE DRG-Based Payment System contained in this notice are effective for admissions occurring on or after October 1, 2008.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ms. Ann N. Fazzini, Medical Benefits and Reimbursement Branch, TMA, telephone (303) 676–3803.

Questions regarding payment of specific claims under the TRICARE DRG-Based Payment System should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992), set forth the basic procedures used under the CHAMPUS DRG-Based Payment System. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-Based Payment System is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a

description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the TRICARE DRG-Based Payment System.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-Based Payment System, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE DRG-Based Payment System is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented 34 neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the 2 age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to Major Diagnostic Category (MDC) 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic. For admissions occurring on or after October 1, 2004, DRG 483 was deleted and replaced with DRGs 541 and 542, splitting the assignment of cases on the basis of the performance of a major operating room procedure. The description for DRG 480 was changed to ''Liver Transplant and/or Intestinal Transplant'', and the description for DRG 103 was changed to ''Heart/Heart Lung Transplant or Implant of Heart Assist System.'' For FY 2007, CMS implemented classification changes, including surgical hierarchy changes. The TRICARE Grouper incorporated all changes made to the Medicare Grouper, with the exception of the pre-surgical hierarchy changes, which will remain the same as FY 2006. For FY 2008, Medicare implemented their Medicare-Severity DRG (MS–DRG) Based Payment System. TRICARE, however, continued with the Centers for Medicare and Medicaid Services DRG-based (CMS–DRG) payment system for FY 2008. For FY 2009, the TRICARE/CHAMPUS DRG-Based Payment System shall be modeled on the MS–DRG system, with the following modifications.

The MS–DRG system consolidated the 43 pediatric CMS DRGs that were defined based on age less than or equal to 17 years of age into the most clinically similar MS–DRGs. In their Inpatient Prospective Payment System final rule for MS–DRGs, Medicare stated for their population these pediatric CMS DRGs contained a very low volume of Medicare patients. At the same time, Medicare encouraged private insurers and other non-Medicare payers to make refinements to MS–DRGs to better suit the needs of the patients they serve. Consequently, TRICARE finds it appropriate to retain the pediatric CMS–DRGs for our population. TRICARE is also retaining the TRICARE-specific DRGs for neonates and substance use.

TRICARE has retained the MS–DRG numbering system for FY 2009, and those TRICARE-specific DRGs have been assigned available, blank DRG numbers unused in the MS–DRG system. We refer the reader to *http://www.tricare.mil/drgrates* for a complete crosswalk containing the TRICARE DRG numbers for FY 2009.

For FY 2009, TRICARE will use the MS–DRG v26.0 pre-MDC hierarchy, with the exception that MDC 15 is applied after DRG 011–012 and before MDC 24.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. TRICARE will also duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board. In addition, TRICARE will continue to utilize the out commuting wage index adjustment.

C. Revision of the Labor-Related Share of the Wage Index

TRICARE is adopting CMS' percentage of labor related share of the standardized amount. For wage index values greater than 1.0, the labor related portion of the Adjusted Standardized Amount (ASA) shall equal 69.7 percent. For wage index values less than or equal to 1.0 the labor related portion of the ASA shall continue to equal 62 percent.

D. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS for all hospitals subject to the TRICARE DRG-Based Payment System according to CMS's August 19, 2008, final rule. For FY 2009, the market basket is 3.6 percent.

E. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments (TRICARE reimburses hospitals for their capital costs as reported annually to the contractor on a pass through basis), we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2009, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for Indirect Medical Education (IDME) plus a fixed dollar amount. Thus, for FY 2009, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $20,185 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

F. National Operating Standard Cost as a Share of Total Costs

The FY 2007 TRICARE National Operating Standard Cost as a Share of Total Costs (NOSCASTC) used in calculating the cost outlier threshold is 0.925. TRICARE uses the same methodology as CMS for calculating the NOSCASTC; however, the variables are different because TRICARE uses national cost to charge ratios, while CMS uses hospital specific cost to charge ratios.

G. Indirect Medical Education (IDME) Adjustment

Passage of the Medicare Modernization Act (MMA) of 2003 modified the formula multipliers to be used in the calculation of the indirect medical education IDME adjustment factor. Since the IDME formula used by TRICARE does not include disproportionate share hospitals, the variables in the formula are different than Medicare's, however; the percentage reductions that will be applied to Medicare's formula will also

be applied to the TRICARE IDME formula. The new multiplier for the IDME adjustment factor for TRICARE for FY 2009 is 1.02.

H. Expansion of the Post Acute Care Transfer Policy

For FY 2009, TRICARE is adopting CMS' expanded post acute care transfer policy according to CMS' final rule published August 19, 2008.

I. Blood Clotting Factor

For FY 2009, TRICARE is adopting CMS' payment methodology for blood clotting factor according to CMS' final rule published August 18, 2006.

J. Cost to Charge Ratio

While CMS uses hospital-specific cost to charge ratios, TRICARE uses a national cost to charge ratio. For FY 2009, the cost-to-charge ratio used for the TRICARE DRG-Based Payment System for acute care hospitals and neonates will be 0.3726 which is increased to 0.3796 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.4099.

K. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *http://www.tricare.osd.mil* under the sequential headings TRICARE Provider Information, Rates and Reimbursements, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-Based Payment System during FY 2009 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-Based Payment System are in 32 CFR Part 199.

Dated: October 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–25984 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Amended Notice of Meeting of the Air University Board of Visitors, Reference Published **Federal Register** Notice, Vol. 73, No. 181, Wednesday, September 17, 2008.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Monday, November 17th, 2008, from 8 a.m.–5 p.m., and Tuesday, November 18th, 2008, from 8 a.m.–8 p.m. Due to conference room renovation, portions of the meeting will be held off-base in the local community. Please contact Dr. Dorothy Reed, 334–953–5159 for further details of the meeting locations.

The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR § 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Dr. Dorothy Reed, Federal Designated Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159 or Mrs. Diana Bunch, Alternate Federal Designated Officer, same address, telephone (334) 953–4547.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E8–26006 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket No. USA–2008–0005]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 1, 2008.

Title, Form, and OMB Number: Application for a Department of the Army Permit; ENG Form 4345, OMB Control Number 0710–0003.

Type of Request: Revision.

Number of Respondents: 89,450.

Responses Per Respondent: 1.

Annual Responses: 89,450.

Average Burden per Response: 11 hours.

Annual Burden Hours: 984,000.

Needs and Uses: Information collected is used to evaluate, as required by law, proposed construction or filing in waters of the United States that result in impacts to the aquatic environment and nearby properties, and to determine if issuance of a permit is in the public interest. Respondents are private landowners, businesses, non-profit organizations, and government agencies. Respondents also include sponsors of proposed and approved mitigation banks and in-lieu fee programs.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State; local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title 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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: October 24, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–26002 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0077]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army (OAA–RPA), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 30, 2008.

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, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, Military Surface Deployment and Distribution Command, 661 Sheppard Place, Ft. Eustis, VA 23604, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Signature and Tally Record; DD Form 1907; OMB Control Number 0702–0027.

Needs and Uses: Signature and Tally Record (STR) is an integral part of the Defense Transportation System and is used for commercial movements of all sensitive and classified material. The STR provides continuous responsibility for the custody of shipments in transit and requires each person responsible for the proper handling of the cargo to sign their name at the time they assume responsibility for the shipment, from point of origin, and at specified stages until delivery at destination. A copy of the STR, along with other transportation documentation is forwarded by the carrier to the appropriate finance center for payment.

Affected Public: Business or Other For-Profit.

Annual Burden Hours: 3,750.

Number of Respondents: 130.

Responses Per Respondent: 577.

Average Burden Per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The destination transportation officer uses the DD Form 1907 to assure that the carriers utilize the STR and provide the transportation service as requested by origin shipper. A copy of the STR, along with other transportation documentation, is forwarded by the carrier to the appropriate finance center for payment. The DD Form 1907 verifies the protected services requested in Bill of Lading that was provided.

Dated: October 24, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–26005 Filed 10–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement To Permit Construction of Dam and Reservoir along Murder Creek, Conecuh County, AL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps) intends to prepare a Draft Environmental Impact Statement (EIS) to address the potential impacts associated with permitting construction of a dam and reservoir along Murder Creek in Conecuh County, AL. Evaluation of the proposed project via an EIS will proceed in compliance with the National Environmental Policy Act (NEPA). Upon completion of the EIS, the Corps will evaluate a permit application for the proposed work under the authority of Section 404 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action, the NEPA process and the Draft EIS should be addressed to Mr. Chuck Sumner, Planning and Environmental Division, phone (251) 694–3857 or e-mail at *lewis.c.sumner@usace.army.mil*, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION:

1. The applicant for the permit is the Conecuh County Commission. The permit application proposes construction of a dam and the creation of an estimated 2,650 acre lake on Murder Creek in central Conecuh County, AL, approximately three miles northwest of the City of Evergreen. The lake is proposed to be used as a source of irrigation for local agriculture and a water source for the anticipated bio-fuel

industry expected to move into the local area. Construction of the proposed lake will require an approximately 2,000 feet long dam across Murder Creek.

2. Alternatives to the applicants' proposal may exist which would reduce impacts to the surrounding environment. These could include, but are not restricted to, reducing the surface elevation of the lake, thereby building a smaller lake, considering alternate site locations for the lake, pursuing alternate site layouts that may have less impact on the environment, or pursuing alternate sources of water for irrigation and the bio-fuels industry, or combinations of these or other alternatives. A determination of these or other alternatives to be evaluated will be developed during the scoping and evaluation phase of the EIS.

3. *Scoping:* a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, native American tribes, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public scoping meeting will be held to help identify significant issues and to receive public input and comment. The location and time for the public scoping meeting will be advertised through various media outlets at least 30 days prior to the meeting date.

b. The Draft EIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project and alternatives. Specifically, the following major issues will be analyzed in the Draft EIS: hydrologic and hydraulic regimes, threatened and endangered species, fish and wildlife habitat, wetlands, essential fish habitat and other marine habitat, air quality, cultural resources, wastewater treatment capacities and discharges, drainage discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups) (Executive Order 12898), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the Draft EIS. The Corps intends to coordinate and/or consult with an interagency team of Federal and State agencies during scoping and preparation of the Draft EIS. A decision will be made during the scoping process whether other agencies will serve in an official role as cooperating agencies.

4. It is anticipated that the DEIS will be made available for public review in December 2009.

Byron G. Jorns,

Colonel, Corps of Engineers, District Commander.

[FR Doc. E8–25986 Filed 10–30–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement/Environmental Impact Report for the Proposed South Coast Rail Project, Commonwealth of Massachusetts, Department of the Army Permit Application Number NAE–2007–00698

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Army Corps of Engineers, New England District (Corps) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate a proposed establishment of passenger rail service between Boston and New Bedford/Fall River, MA. The Massachusetts Executive Office of Transportation and Public Works (EOT) has submitted an application for a Department of the Army permit to discharge fill material into waters of the United States (U.S.), ranging in area from less than one acre to approximately eight acres (depending on the alternative selected), including wetlands, incidental to the establishment of the passenger rail service. The EOT has stated that the purpose of their proposed project is to more fully meet the existing and future demand for public transportation between Fall River/New Bedford and Boston, MA, and to enhance regional mobility, while supporting smart growth planning and development strategies in the affected communities. The cities of Taunton, Fall River, and New Bedford are the only cities within 50 miles of Boston that are not currently served by passenger rail.

The EIS will also be prepared with the intent to serve as a joint Massachusetts Environmental Policy Act (MEPA) and NEPA document that will comply with the procedural requirements of both state and federal law and serve as a combined EIS/Environmental Impact Report (EIR). The MEPA review will be conducted simultaneously with the NEPA process.

The EIS/EIR will evaluate a range of alternative transit routes to determine the Least Environmentally Damaging Practicable Alternative (''LEDPA''), in accordance with the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230). Alternative routes presently identified include four principal rail routes: (1) The ''Attleboro Alternative'', (2) the ''Stoughton Alternative'', (3) the ''Middleborough Alternative'', and (4) the ''Attleboro-Middleborough Hybrid Alternative''. A fifth alternative is a Rapid Bus Alternative using modified highway infrastructure. A No Build/Transportation Surface Management alternative will also be evaluated. Public scoping may identify other alternatives for evaluation in the EIS/EIR.

DATES: Written comments must be received by: January 9, 2009.

ADDRESSES: Comments can be sent to Mr. Alan Anacheka-Nasemann, U.S. Army Corps of Engineers, New England District, Regulatory Division, ATTN: CENAE–R–PEA, 696 Virginia Road, Concord, MA, or by e-mail to: *SCREIS@usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Anacheka-Nasemann, (978) 318–8214, e-mail: *SCREIS@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The Massachusetts EOT has submitted an application under Section 404 of the Clean Water Act for a Department of the Army permit to discharge fill material into waters of the U.S. incidental to establishment of passenger rail service between Boston and New Bedford and Fall River, MA, known as the ''South Coast Rail Project.'' To date, the proposed South Coast Rail Project has been undergoing review and analysis of alternatives in accordance with the Corps' New England District's Highway Methodology. EOT completed a preliminary analysis of alternatives in April 2008, which consisted of investigating, analyzing and screening a number of alternatives. Five alternative transit routes, with mode variations and slight route variations, resulted from the screening process. The ''Attleboro Alternative'' would expand service via the existing AMTRAK Northeast Corridor, with added capacity, new track and existing freight lines from Attleboro via Norton to Taunton. This route could potentially affect two Commonwealth of Massachusetts Areas of Critical Environmental Concern (ACECs) known as Fowl Meadow/

Ponkapoag Bog and the Three-Mile River Watershed, and would also include construction of new track (''Attleboro bypass''), near or over Chartley Pond in the vicinity of an existing National Grid electrical line right-of-way. The ''Stoughton Alternative'' would extend the existing Stoughton commuter rail line from its current terminus in Stoughton along a presently abandoned right-of-way through Easton and Raynham to Taunton. This would follow an existing railroad grade that crosses Hockomock Swamp, a Massachusetts ACEC. The ''Middleborough Alternative'' would extend the existing Old Colony commuter rail line through Middleborough to Taunton. Continuation from Taunton to New Bedford would be via an existing freight track via Lakeville and Berkley. The ''Attleboro-Middleborough Hybrid Alternative'' would extend existing Old Colony commuter rail line through Middleborough to Taunton and add trains to the existing Amtrak Northeast Corridor via Attleboro and along the Attleboro bypass. This alternative could potentially affect Three-Mile River Watershed ACEC. The links between Taunton and New Bedford/Fall River are common to all four rail alternatives. The ''Rapid Bus'' alternative would involve construction of new Rapid Bus dedicated lanes along existing Massachusetts Highways 24 and 128, and Interstate Highway 93. The No Build/Transportation Surface Management alternative would involve enhancement to existing bus services without infrastructure improvements.

Elements of all of the alternatives proposed at this time by EOT would be located in waters of the U.S. Estimates of surface area impacts range from less than one to approximately eight acres, depending on the alignment. The proposed alternative routes could affect natural resources, including Commonwealth of Massachusetts Wildlife Management Areas and Areas of Critical Environmental Concern. Although there are no Federally listed threatened or endangered species known to be found in the proposed alternative route areas, the Hockomock Swamp ACEC is known to contain at least sixteen species listed as threatened, endangered or species of special concern by the Commonwealth of Massachusetts.

All of the proposed alternative routes would affect historic and cultural resources, including properties eligible for listing on the National Register of Historic Places and historic districts that have cultural importance in the affected communities. Consultation on the extent of the impacts on these resources will be undertaken with the State Historic Preservation Office under Section 106 of the National Historic Preservation Act.

The Corps is seeking participation and input of all interested federal, state and local agencies, Native American groups, and other concerned private organizations or individuals on the scope of the EIS/EIR. Significant issues to be analyzed in depth in the EIS/EIR include: Impacts to waters of the U.S., including vernal pools and other wetlands; cultural resources, threatened and endangered species; transportation; air quality, including greenhouse gas emissions; noise and vibration; surface water and groundwater; hydrology and water quality; and socioeconomic effects.

It is anticipated that the Draft EIS/Draft EIR will be made available to the public in the late spring of 2009.

Two scoping meetings will be held. The meeting dates are: 1. Tuesday, December 2, 2008, 6:30 p.m., University of Massachusetts (U–Mass) Dartmouth, Woodland Commons Building, 285 Old Westport Road, North Dartmouth, MA 02747–2300, Parking is available in lot #7.

2. Wednesday, December 3, 2008, 6:30 p.m., Taunton High School Auditorium, 50 Williams Street, Taunton, MA 02780.

Pre-registration for each meeting will begin at 5:30 p.m. on the dates and locations listed above.

Dated: October 22, 2008.

Lieutenant Colonel Stephen E. Lefebvre,

Deputy District Commander, U.S. Army Corps of Engineers, New England.

[FR Doc. E8–25987 Filed 10–30–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Advanced Placement (AP) Test Fee Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.330B.

DATES:

Applications Available: October 31, 2008.

Deadline for Transmittal of Applications: December 15, 2008.

Deadline for Intergovernmental Review: February 13, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AP Test Fee program awards grants to eligible State educational agencies (SEAs) to enable them to pay all or a portion of advanced placement test fees on behalf of eligible low-income students who (1) are enrolled in an advanced placement course and (2) plan to take an advanced placement exam. The program is designed to increase the number of low-income students who take advanced placement tests and receive scores for which college academic credit is awarded.

Program Authority: 20 U.S.C. 6531–6537.

Applicable Regulations: The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $70,000,000 for the new Advanced Placement and International Baccalaureate (AP/IB) program authorized under Title VI, Subtitle A, Part II of the America COMPETES Act, and the AP Test Fee and Advanced Placement Incentive (API) programs authorized under Title I, Part G of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) for FY 2009, of which we expect to use an estimated $12,000,000 for this program. The remaining funds would support new grants under the AP/IB program and continuation grants under the API program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $2,164—$3,507,966.

Estimated Average Size of Awards: $285,714.

Estimated Number of Awards: 42.

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

Project Period: Up to 12 months.

III. Eligibility Information

1. Eligible Applicants: SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands,

the Federated States of Micronesia, and the Republic of Palau (subject to continued eligibility).

Note: For purposes of this program, the Bureau of Indian Education in the U.S. Department of the Interior is treated as an SEA.

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

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Section 1706 of ESEA requires that grant funds provided under the AP Test Fee program supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals in paying for the cost of advanced placement test fees.

3. *Other:* Current grantees under this program that expect to have sufficient carryover funds to cover school year 2008–2009 advanced placement exam fees for eligible low-income students should not apply for a new award under this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* To obtain an application package via the Internet use the following address: *http://www.ed.gov/programs/apfee/applicant.html.*

To obtain an application package from the Office of Elementary and Secondary Education use the following address: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: *Francisco.Ramirez@ed.gov*.

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

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: October 31, 2008.

Deadline for Transmittal of Applications: December 15, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: February 13, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Advanced Placement Test Fee Program, CFDA Number 84.330B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the AP Test Fee Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.330, not 84.330B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC, time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC, time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC, time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include

(1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E224, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.330B),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.330B),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

The Department intends to fund, at some level, all applications that meet the minimum Requirements for Approval of Application as described in the application package for this program and that demonstrate need for new or additional funds to pay advanced placement exam fees on behalf of low-income students for school year 2008–2009.

Also, in determining whether to approve an application for a new award (including the amount of the award) from an applicant with a current grant under this program, the Department will consider the amount of any carryover funds under the existing grant.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed five performance measures to evaluate the overall effectiveness of the AP Test Fee and API programs: (1) The number of advanced placement tests taken by low-income public school students nationally; (2) The number of advanced placement tests taken by minority (Hispanic, Black, Native American) public school students nationally; (3) The percentage of advanced placement tests passed (for AP exams, receiving scores of 3–5) by low-income public school students nationally; (4) The number of advanced placement tests passed (for AP exams, receiving scores of 3–5) by low-income public school students nationally; and (5) The cost per passage of an advanced placement test taken by a low-income public school student. The information provided by grantees in their final performance reports will be one of the sources of data for this measure. Other sources of data include the College Board and International Baccalaureate North America.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: *Francisco.Ramirez@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: October 28, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–26069 Filed 10–30–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before December 1, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses

electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

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

Dated: October 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New Collection.

Title: College Assistance Migrant Program (CAMP).

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 38.

Burden Hours: 1,520.

Abstract: For the College Assistance Migrant Program (CAMP), a customized annual performance report (APR) that goes beyond the generic 524B is requested to facilitate the collection of more standardized and comprehensive data to inform Government Performance and Results Act (GPRA), to improve the overall quality of data collection, and to increase the quality and quantity of data that can be used to inform policy decisions.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3813. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E8–25982 Filed 10–30–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 2008.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Teacher Education Assistance for College and Higher Education Grant Eligibility Regulations.

Frequency: On Occasion.

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

Reporting and Recordkeeping Hour Burden:

Responses: 1,137,405

Burden Hours: 116,120.

Abstract: Eligible and participating institutions of higher education who participate in the TEACH Grant program operate the program consistent with these regulations. Information is necessary to make determinations regarding program compliance with the implementing regulations. This request is for approval of reporting and recordkeeping requirements contained in the attached proposed regulations related to the TEACH Grant administrative requirements for the Title IV, HEA programs. The information collection requirements in these proposed regulations are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3901. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E8–25983 Filed 10–30–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management: Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding

AGENCY: Department of Energy.

ACTION: Notice of revised proposed policy and request for comments.

SUMMARY: The Department of Energy (DOE) is publishing this notice of revised proposed policy to set forth its revised plans for implementing Section 180(c) of the Nuclear Waste Policy Act of 1982 (NWPA), as amended. This notice updates the revised proposed policy that DOE published on July 23, 2007 (72 FR 40139) by providing the funding allocation approach for grants to federally recognized Tribes which may be eligible for assistance under Section 180(c) and also includes minor changes for clarification to the policy as it applies to both States and Tribes. Under Section 180(c) of the NWPA, DOE shall provide technical and financial assistance for training of local public safety officials to States and Tribes through whose jurisdictions the DOE plans to transport spent nuclear fuel or high-level radioactive waste to a facility authorized under Subtitle A or C of the NWPA (NWPA-authorized facility). The training is to cover both safe routine transportation and emergency response procedures. The purpose of this notice is to communicate information to stakeholders about Section 180(c) issues and request comments on this revised proposed policy and the questions specified herein.

Written and electronic comments may be submitted to DOE on this document.

DATES: Comments must be received by DOE on or before January 31, 2009.

ADDRESSES: Written comments should be directed to Mr. Frank Moussa, U.S. Department of Energy, c/o Patricia Temple, Bechtel SAIC Company, LLC, 955 N. L'Enfant Plaza, SW., Suite 8000, Washington, DC 20024. The revised proposed policy and electronic comment forms are also available at *http://www.ocrwm.doe.gov*. Fill out the form and click ''submit'' to send your comments in through the Web site. Persons submitting comments should include their name and address. Receipt of written comments in response to this notice will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed. Electronic comments will receive an electronic notice of receipt.

FOR FURTHER INFORMATION CONTACT: For further information on the transportation of spent nuclear fuel and high-level radioactive waste under the NWPA, please contact: Mr. Frank Moussa, Office of Logistics Management, Office of Civilian Radioactive Waste Management (RW–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, Telephone: 202–586–2837.

General program information is available on the Office of Civilian Radioactive Waste Management (OCRWM) Web site located at *http://www.ocrwm.doe.gov*.

Copies of comments received will be posted on the OCRWM Web site. Please allow up to two weeks after DOE receives comments to view them on the Web site.

Request for Comments: DOE will consider all comments submitted by the closing date. Comments received after that date will be considered to the extent practicable. DOE requests that commenters pay particular attention to the questions at the end of this revised proposed policy.

SUPPLEMENTARY INFORMATION:

I. Purpose and Need for Agency Action

Under the NWPA, DOE is responsible for the transportation of spent nuclear fuel and high-level radioactive waste to a NWPA-authorized facility. In particular, under Section 180(c) of the NWPA, DOE is responsible for providing technical and financial assistance for training of local public safety officials to States and Tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste to a NWPA-authorized facility. Section 180(c) further provides that such training cover procedures required for both safe routine transportation of these materials and for dealing with emergency response situations. Section 180(c) identifies the Nuclear Waste Fund as the source of funds for this assistance.

Subject to the availability of appropriated funds, DOE plans to conduct a pilot program for 180(c) grants. DOE will evaluate public comments received on the July 23, 2007, notice of revised proposed policy (the 2007 notice) and this notice prior to implementing the pilot program. After reviewing the comments received on the notices of revised proposed policy and completion of the pilot program, DOE plans to issue a new revised proposed policy for public comment and thereafter to issue a final policy prior to awarding the first 180(c) grants. The first grants are planned to be issued approximately four years prior to the commencement of shipments through a State or Tribe's jurisdiction to support assessing the need for and planning for training.

The *Office of Civilian Radioactive Waste Management, Strategic Plan for the Safe Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste to Yucca Mountain: A Guide to Stakeholder Interactions* calls for DOE to work closely with State Regional Groups and individual impacted States and Tribes as it makes operational decisions regarding shipments to a NWPA-authorized facility. DOE's practice of involving States, Tribes, industry, utilities, and other interested parties in transportation planning has contributed to a decades-long record of safely transporting such material. This revised proposed policy supports DOE's objective to develop and begin implementation of a comprehensive national spent fuel transportation plan that accommodates State, local, and Tribal concerns and input to the greatest extent practicable.

II. Background

On January 3, 1995, DOE issued a proposed policy on how it would implement Section 180(c) of the NWPA (60 FR 99). DOE subsequently issued several notices relating to its proposed 180(c) policy in the **Federal Register** on July 18, 1995 (60 FR 36793), May 16, 1996 (61 FR 24772), July 17, 1997 (62 FR 38272), and April 30, 1998 (63 FR

23753). DOE published the 2007 Notice (72 FR 40139) to set forth and communicate to stakeholders the revised policy by which DOE currently intends to implement Section 180(c). DOE previously requested comments on the 1998 notice of revised proposed policy and procedures. Those comments were reviewed and considered during the development of the 2007 notice. In the 2007 notice, DOE stated that it had recently begun meeting with Tribes to discuss the funding allocation options for grants to Tribes and that the proposed funding allocation approach described therein would apply only to States. This notice of revised proposed policy provides the approach by which DOE intends to allocate funds to Tribes based on input received in those discussions.

This policy is intended to be consistent with Homeland Security Presidential Directives Number 5, ''Management of Domestic Incidents,'' issued February 28, 2003, and Number 8, ''National Preparedness,'' issued December 17, 2003; the Department of Homeland Security's National Preparedness Goal, issued December 2005; the National Preparedness Guidance issued April 27, 2005; the National Incident Management System, issued March 1, 2004; and the National Response Plan, issued December 2004.

III. Summary of Changes From the July 23, 2007, Notice of Revised Proposed Policy

This notice of revised proposed policy updates the 2007 notice by providing the approach by which DOE intends to allocate funds to federally recognized Tribes which may be eligible for assistance under Section 180(c). The section on Basis for Cost Estimate/Grant Funding Allocation to States was edited to accommodate the addition of the allocation method for the Tribes.

There are also some additional differences between this notice and the 2007 notice. In the section on Purpose and Need for Agency Action, the details regarding the anticipated timing of initial shipments to the repository and timing of the the pilot program for 180(c) grants have been removed in acknowledgement of schedule uncertainties resulting from funding shortfalls for OCRWM. In addition, some substantive changes to the policy as it applies to both States and Tribes have been made, including replacing the term ''emergency response'' with ''emergency management'' as appropriate, given that the policy allows for a broader variety of activities to be covered by Section 180(c) assistance, such as planning, training, exercises and related activities. In the second sentence of the fourth paragraph of the Policy Statement section, the language was changed to clarify that assistance provided by DOE under Section 180(c) will ''help State, Tribal, and local officials prepare for OCRWM shipments'' rather than ''ensure that State, Tribal, and local officials are prepared for OCRWM shipments,'' in order to clarify the proper role of such assistance. In the second sentence of the first paragraph of the section on Eligibility and Timing of the Grants Program, the description of eligibility where a route constitutes a border between two jurisdictions was revised to eliminate use of the term ''reservations,'' in consideration of Tribes that have emergency management responsibility for Tribal lands that do not comprise reservation lands. In the Request for Comments section, some additional questions have been added to those that were included in the 2007 notice. Finally, a number of typographical and editorial corrections were made in the document.

IV. Policy

Policy Statement

Section 180(c) of the NWPA states:

> The Secretary [of Energy] shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations.

This proposed policy addresses the provision of technical and financial assistance for training, both for normal transportation operations and for potential incidents that may require emergency response during shipments of spent nuclear fuel or high-level radioactive waste to a NWPA-authorized facility. Technical assistance to support 180(c) activities will consist of non-monetary assistance that the Secretary of Energy can provide from DOE's specific knowledge, expertise, and existing resources to aid training of public safety officials on procedures for safe routine transportation and for emergency response situations during the transport of spent nuclear fuel and high-level radioactive waste to a NWPA-authorized facility. Technical assistance includes, but is not limited to, access to DOE's regional and Headquarters representatives involved in the planning and operation of NWPA transportation or emergency preparedness activities, provision of information packets that include materials about the OCRWM Program and shipments, and provision of other training materials and information. Financial assistance will consist of assessment and planning grants and annual training grants. The provision of grants will be subject to the criteria described herein, as well as the availability of appropriated funds.

This revised proposed policy is consistent with DOE's longstanding commitment to meet or exceed requirements and standards applicable to the transport of spent nuclear fuel and high-level radioactive waste; to cooperate with States, Tribes, and local governments; and to make use of the existing expertise of States, Tribes, and local governments to the maximum extent practicable.

Section 180(c) funds are intended to be used for training specific to shipments of spent nuclear fuel and high-level radioactive waste to a NWPA-authorized facility. DOE will work with States and Tribes to evaluate current preparedness for safe routine transportation and emergency response capability and will provide funding as appropriate to help State, Tribal, and local officials prepare for OCRWM shipments. Section 180(c) funds and related training are intended to supplement but not duplicate existing training for safe routine transportation and emergency preparedness. DOE will work with States and Tribes to coordinate and integrate Section 180(c) activities with existing training programs designed for State, Tribal, and local public safety officials. Equipment purchased with Section 180(c) funds is intended to be used for training to prepare for the specific hazards presented by shipments to a NWPA-authorized facility. If necessary, such equipment could then be used for inspections and for responding to emergencies. Since State and Tribal governments have primary responsibility to protect the public health and safety in their jurisdictions, they will have flexibility to decide which allowable activities to request Section 180(c) assistance to meet their unique needs within the limits of the NWPA and DOE and other Federal financial assistance regulations and restrictions.

Training with Section 180(c) funds should be to the level of detail and to the degree necessary to prepare for shipments to a NWPA-authorized facility. When necessary or appropriate, training should be consistent with the Occupational Safety and Health Administration (OSHA) awareness or operations levels, as those terms are

defined in 29 CFR 1910.120, and the jurisdiction's emergency response plans. Any deficiency in basic emergency response capability may be addressed through consultation and technical assistance.

Funding Mechanism

DOE will implement Section 180(c) by funding direct grants to eligible States and Tribes. The grants program will be administered in accordance with the DOE Financial Assistance rules (10 CFR part 600), which implement applicable Office of Management and Budget circulars, and applicable law. The grant application process will require States and Tribes to describe and justify their proposed work in the format of a five-year project with a more detailed two-year work plan.

Applications will only be accepted through the Federal Government's electronic grant application system at *http://www.grants.gov*.

Basis for Cost Estimate/Grant Funding Allocation to States and Tribes

DOE anticipates providing funds to States and Tribes in accordance with the approach described below. Specifically, DOE expects to make two grants available: An assessment and planning grant and an annual training grant.

The assessment and planning grant to each eligible State and Tribe will support a needs assessment to identify training needs that might be addressed in future training grants to that State or Tribe. The amount of the assessment and planning grant is not expected to exceed $200,000, adjusted annually for inflation, for each eligible State and Tribe based on appropriated funds available for that purpose in a particular fiscal year. The annual training grant to each eligible State and Tribe will support allowable activities as specified in the grant. The annual training grant for each eligible State and Tribe will consist of a base amount not expected to exceed $100,000, adjusted annually for inflation, as well as a variable amount. The base amount for each grant depends on Congressional appropriations. DOE selected the amounts of the base grants based on experience with similar training programs and discussions with State, Tribal, and emergency response officials about the scope of work likely for each grant.

The amount of the annual training grants will be based on the appropriated funds available for that purpose in a particular fiscal year. Available funds will be first used to fund the base portion of the grant. Each eligible State will receive the same base amount as every other eligible State; each eligible Tribe will receive the same base amount as every other eligible Tribe. Remaining available funds will be used to fund the variable portion of the grant for each eligible State and each eligible Tribe on the basis of the allocation methods described below.

Allocation Method for Variable Portion of States' Annual Training Grants

The variable portion of the training grant for States will be determined through a risk-based formula using the factors of population along routes, route miles, number of shipments, and shipping sites. The population figure, calculated from U.S. Census Bureau data, acts as a surrogate for either the number of responders requiring training or the number of jurisdictions requiring training. Total route miles (for all shipping modes) act as a surrogate for the accident risk. The number of shipments addresses the additional burden placed on States that are heavily impacted by shipments. Finally, the number of shipping sites will factor in the additional training burden placed on States that must prepare for point-of-origin inspections of both the package and the vehicle. Shipping sites will include commercial nuclear power plants, DOE sites, and any other entity shipping spent nuclear fuel or high-level radioactive waste to a NWPA-authorized facility.

The steps are as follows:

Step 1: Collect raw data with respect to the factors of population along routes, route miles, number of shipments, and shipping sites for each State.

Step 2: Divide the raw State data for each factor by the national total for each factor. The result is each State's percentage of the national total for each factor.

Step 3: Multiply each State's percentage of each factor by the correspondent weighting for each factor as specified below; the result would be summed to reach a total for each State, as follows:

0.3 × Percentage of Population Along Route Corridors
+0.3 × Percentage of Route Miles
+0.3 × Percentage of Number of Shipments
+0.1 × Percentage of Shipping Sites
= Total for Each State

Step 4: Sum the total for each State to obtain a national total.

Step 5: Divide each State's total by the national total to reach each State's percentage of available funds for the year.

DOE will work with applicants to ensure consistent sources are used to estimate the raw data for each factor of the formula. All factors are specific to the shipping year. The specific sources DOE will use for the raw data are as follows:

- The population factor will be calculated using the population within 2,500 meters of the route as calculated by the Transportation Routing Analysis Geographic Information System (TRAGIS), DOE's routing model. TRAGIS uses U.S. Census Bureau data as its source for population.
- For route miles, DOE will calculate the national total using TRAGIS to estimate the route miles for each year's projected shipments.
- The number of shipments annually through a State will be estimated based on DOE's projected shipments for each year.
- The number of shipping sites will be based on the number of defense and civilian sites originating a shipment within the State for the year for which an applicant is applying for funding.

Allocation Method for Variable Portion of Tribes' Annual Training Grants

The variable portion of the Training Grant for Tribes will be determined on the basis of the results from each Tribe's needs assessment conducted under the assessment and planning grant, as described below.

The steps are as follows:

Step 1: DOE will notify Tribes along the planned shipment routes of their eligibility.

Step 2: Each Tribe will have 90 days from the date of notification to complete its assessment and planning grant application. This application will require the Tribe to describe how it intends to conduct its needs assessment once it receives the funding. If requested, DOE will provide technical assistance to Tribal officials to complete the application. DOE has Transportation Emergency Preparedness Program coordinators and Tribal Points of Contact in each DOE region of the country that could help Tribal officials design their needs assessment and complete their grant proposal. In addition, OCRWM officials will be available to provide assistance and advice.

Step 3: The Tribe will submit its application for the assessment and planning grant.

Step 4: DOE will evaluate the application and award the grant based on the merits of the application.

Step 5: The Tribe will receive its assessment and planning grant award and initiate its needs assessment. DOE personnel will be available to provide

technical assistance, if requested, during the needs assessment phase.

Step 6: The Tribe will complete its needs assessment, the results of which will form the basis for the Tribe's request for the variable portion of the training grant.

Step 7: The Tribe will submit its application for the training grant.

Step 8: DOE will evaluate the training grant application and award a grant based on the merits of the application.

Eligibility and Timing of the Grants Program

DOE will provide grants and technical assistance to those States and Tribes through whose jurisdictions the Secretary of Energy plans to transport spent nuclear fuel and high-level radioactive waste to a NWPA-authorized facility. Where a route constitutes a border between two such jurisdictions, every jurisdiction with emergency management responsibility and inspection authority over the route will be eligible for Section 180(c) assistance. If a State or Tribe will not have shipments but has cross-deputization or mutual aid agreements with a jurisdiction that will have shipments, the non-shipment jurisdiction may work with DOE to receive funding.

DOE will send a letter to the Governor or Tribal leader's office notifying them of their State or Tribe's eligibility to apply for Section 180(c) grants approximately five years before shipments are scheduled through that State or Tribe's jurisdiction. Each State or Tribe shall designate which agency or staff member of the State or Tribe will administer its Section 180(c) grants. Subsequently, DOE will communicate with the State or Tribe's designated agency or staff person regarding Section 180(c) grants.

Subject to the availability of appropriated funds, DOE expects to begin making assessment and planning grants available to a State or Tribe approximately four years prior to the first shipment to a NWPA-authorized facility through that State or Tribe's jurisdiction.

DOE intends to issue training grants in each of the three years prior to a scheduled shipment through a State or Tribe's jurisdiction and every year that shipments are scheduled.

Allowable Activities

DOE intends to allow a broad array of eligible planning and training activities, thus providing the recipients flexibility to direct funds toward their individual needs. DOE will require applicants to describe and justify the need for proposed activities, training, and purchases in the application package for review and approval by DOE.

Under Section 180(c) of the NWPA, DOE shall provide technical and financial assistance to States and Tribes through whose jurisdictions DOE plans to transport spent nuclear fuel or high-level radioactive waste to a NWPA-authorized facility. States and Tribes should describe in their grant applications how the grants will be used to provide training to local public safety officials. States and Tribes are expected to coordinate with local public safety officials during the assessment and planning phase and in developing their applications for the annual training grants. DOE recognizes that, depending on the State or Tribe, the role of local public safety officials in responding to incidents involving radioactive materials varies from a minimal role of crowd and traffic control to the primary role of incident command. Therefore, the benefit to local public safety officials should be consistent with established State, Tribal, and local roles in dealing with routine transportation and in responding to an incident involving NWPA shipments.

Potential activities for the Assessment and Planning Grant include:

- Assessment of the jurisdiction's needs for training on procedures related to safe routine transportation and emergency management situations.
- Development of mutual aid agreements among neighboring jurisdictions and with Federal agencies.
- Planning for how to provide needed training for public safety officials.
- Participation in DOE, regional, and national transportation planning meetings.
- Intra- and interstate and Tribal planning and coordination.
- Support for exercises to test plans and training.
- Review of DOE transportation, emergency management, communications, and security plans, including threat assessments and civil disobedience/law enforcement planning.
- Obtaining access to DOE data and systems, such as the Transportation Tracking and Communications system (TRANSCOM) for information and shipment tracking.
- Evaluation and identification of alternative routes for DOE non-classified radioactive materials shipments according to 49 CFR 397, *Transportation of Hazardous Materials' Driving and Parking Rules* (referred to as HM–164).
- Risk assessments.
- Participation in DOE's Transportation Emergency Preparedness Program (TEPP).[1]
- Coordination with DOE's Radiological Assistance Program (RAP) training, exercises, and planning activities.[2]
- Planning activities using TRAGIS or other DOE route or risk assessment models.
- Participation in carrier evaluation programs that may be implemented through other agencies or organizations.
- Staff costs related to planning and needs assessments.

The Training Grant has two categories of allowable activities: Activities related to safe routine transportation and activities related to emergency management.

Activities for the safe routine transportation aspects of the Training Grant may include:

- Continuation of the activities initiated under the Assessment and Planning Grant, such as coordination with agencies within the State or Tribe, assessment of training needs, and assessment of technical assistance needs.
- Training and staff costs associated with the Department of Transportation's State Rail Safety Participation Program.[3]
- Training for public safety officials in safety and enforcement inspections of highway shipments (drivers, vehicles, and shipping containers).
- Training related to accident prevention (e.g., for safe parking, bad weather, and road conditions).
- Training for appropriate local, State, and Tribal officials on the proper handling of information and documents, including secure and confidential shipments.
- Training for radiological inspections, both rail and truck.

[1] DOE's TEPP integrates transportation emergency preparedness activities for DOE non-classified shipments of radioactive materials to address the emergency response concerns of State, Tribal, and local officials affected by such shipments. TEPP is implemented on a regional basis, with a TEPP Coordinator for each region. TEPP ensures responders have access to the model plans and procedures, training, and technical assistance necessary to respond safely, efficiently, and effectively to transportation incidents.

[2] DOE's RAP is a team of DOE and DOE contractor personnel specifically trained to perform radiological emergency response activities. The RAP teams may deploy at the request of DOE sites; other Federal agencies; State, Tribal or local governments; or from any private organization or individual. Teams are located at eight sites around the Nation.

[3] The Federal Railroad Administration will provide informal outreach and training opportunities to Tribes, since there is no statutory authority for participation by Tribes in the State Safety Participation Program as outlined in 49 CFR 212.

• Training on a satellite tracking system.
• Equipment purchases, calibration, and maintenance for training purposes.[4]
• Staff costs related to training.

Activities for the emergency management aspects of the Training Grant may include:

• Continuation of planning activities begun under the Assessment and Planning Grant.
• Training in implementation of mutual aid agreements among neighboring jurisdictions and agreements with Federal agencies.
• Training for public safety officials in hazardous materials emergency response procedures. When necessary or appropriate, training should be consistent with OSHA awareness or operations levels, as those terms are defined in 29 CFR 1910.120, and the jurisdiction's emergency response plans.
• Participation in DOE's TEPP.
• Equipment purchases, calibration, and maintenance for training purposes.
• Training for emergency medical personnel, including hospital emergency medical personnel.
• Designing, conducting, and evaluating drills and exercises, including the implementation of mutual aid agreements and emergency response plans and procedures.
• Staff costs related to training.

V. Merit Review Criteria

States and Tribes will have flexibility to decide for which allowable activities to request Section 180(c) assistance to meet their unique needs within the limits of the NWPA and DOE and other Federal financial assistance regulations and restrictions. Grant applications will be reviewed in accordance with 10 CFR 600.13, *Merit Review*.

The merit review process consists of a board of technically qualified reviewers who evaluate each grant application on pre-established criteria. The merit review board advises DOE's selection officials as to the merits of each proposed activity and the overall quality of the application. DOE's selection officials will make final funding determinations and notify successful applicants of their award in accordance with standard grant procedures.

The proposed criteria, which the merit review board will use for its review, are described below in Table 1, Assessment and Planning Grant, and Table 2, Training Grant. The applicant's narrative should address each of these criteria in accordance with the instructions provided.

TABLE 1—ASSESSMENT AND PLANNING GRANT

Criteria	Instructions
Conduct a needs assessment and develop a training plan to prepare for NWPA shipments through the applicant's jurisdiction.	In the grant application narrative, make sure the scope of the assessment and plan development is clear and thorough: a. Describe how the State or Tribe will assess needs, including how the State or Tribe will determine what additional planning, training, equipment, and exercises may be needed. b. Describe the technical assistance that will be requested from DOE or other Federal agencies in order to conduct the needs assessment. c. Describe the cost and timeframe of each proposed assessment and planning activity. d. Describe what planning will occur within the State or Tribe and with local jurisdictions. e. Identify all mutual aid agencies that will be contacted to complete the needs assessment and training plan. f. Describe how the proposed grant funding does not supplant or duplicate existing funding from Federal or State sources.
Prepare public safety officials of appropriate units of local government	The narrative should completely and accurately describe: a. How local public safety officials were involved in developing the grant application. b. How local public safety officials will be involved in the needs assessment consistent with their role in radioactive/hazardous materials transportation as defined by the State or Tribe.
Prepare sufficiently to reassure the public of adequate preparedness ...	The narrative should accurately and completely describe: a. How the applicant will assess what is needed to respond to inquiries from the public and the media. b. What activities and measures, if any, are needed to reassure the public of adequate preparedness.
Train for the increment of need specific to NWPA shipments	The narrative should accurately and completely describe: a. What the applicant is already doing to prepare for radioactive materials shipments. b. How each proposed needs assessment activity is specific to the NWPA shipments.

TABLE 2—TRAINING GRANT

Criteria	Instructions
Conduct training on procedures for safe routine transportation to help prevent accidents and respond in a timely and appropriate fashion to incidents involving NWPA shipments.	The narrative should accurately and completely describe: a. How many public safety officials will be trained and what training they will receive, based on the needs assessment conducted under the Assessment and Planning Grant.

[4] Grant funds can be used to purchase equipment for training purposes. They can also be used to calibrate and maintain equipment as long as the equipment is training-related and specific to the needs created by the NWPA shipments.

TABLE 2—TRAINING GRANT—Continued

Criteria	Instructions
	b. List the equipment the applicant proposes to purchase, describe why this equipment is necessary for training for these shipments, and how it is consistent with the training level to which the responders will be trained. c. How the proposed grant funding does not supplant or duplicate existing funding from Federal or State sources. d. How the actions listed in this section help the applicant increase its capability to prevent accidents and respond appropriately to accidents. e. The technical assistance that will be requested from DOE, either from OCRWM, RAP teams, TEPP coordinators, or other Federal agencies. f. How the training and technical assistance will be integrated with assistance received from other Federal Government sources.
Help prepare public safety officials of appropriate units of local government.	The narrative should accurately and completely describe: a. How local public safety officials will benefit from the proposed activities. b. Whether those local public safety officials support the activities proposed in this application and how their level of support is determined.
Prepare sufficiently to reassure the public of adequate preparedness ...	The narrative should accurately and completely describe: a. How the applicant will train to respond to inquiries from the public and the media. b. What activities and measures, if any, will be taken to reassure the public of adequate preparedness.
Train in the increment of need specific to NWPA shipments	The narrative should accurately and completely describe: a. How each proposed activity is specific to the NWPA shipments. b. How the training will be integrated with assistance received from other DOE programs or Federal agencies for radioactive materials transportation preparedness.
Assess level of preparedness after training, exercises, and technical assistance.	The narrative should accurately and completely describe: a. How the applicant will assess their level of preparedness after conducting the proposed activities. The proposed assessment should measure readiness against the objectives described in the applicant's project narrative. b. How the applicant will assess how well it utilized the technical assistance requested.

VI. Request for Comments

Questions 3 through 8 below are repeated from the 2007 notice. If you provided comments on any of these questions in response to the 2007 notice, there is no need to repeat those comments in response to this notice. DOE is considering the comments received in response to the 2007 notice.

DOE requests that interested parties comment on this notice, including the specific questions identified below:

Question 1

(a) Should a certain percentage of the funding received from Congress for the entire Section 180(c) program be set aside for Tribal applicants? This would ensure a set percentage of the total funds would be available for Tribal applicants.

(b) In the alternative, should State and Tribal applicants' funding come from a single allocation of funds? This would make the percentage of funds that Tribes receive from the total Section 180(c) funding variable from year to year.

Question 2

(a) Should the formula described in the revised proposed policy for allocating the variable portion of States' training grants be clarified to prohibit the counting of mileage along a route through Tribal jurisdictions in the calculation of route miles unless the state retains emergency response authority along that stretch of route?

Question 3

(a) Would $200,000 be an appropriate amount for the assessment and planning grant to conduct a needs assessment?

(b) Should the amount be the same for each eligible State and Tribe?

(c) Would there be a need to update the needs assessment and, if so, at what intervals and should funding be made available for this purpose and in what amount?

Question 4

(a) Would $100,000 be an appropriate amount for the annual training grant?

(b) Recognizing that, after commencement of shipments through an eligible State or Tribe, training to maintain capability may become less costly with increased expertise and efficiency, should the base amount of subsequent annual training grants be adjusted downward to reflect the number of years that annual training grants have been received?

(c) What should be the allocation of available appropriated funds for a fiscal year between the base amount and the variable amount of the annual training grants?

(d) Should the entire training grant be variable based on the funding allocation methods described herein?

Question 5

(a) Should the amount of funding be adjusted where a route forms a border between two States, a State and a Tribal reservation, or two Tribal reservations?

(b) Should States or Tribes with mutual aid responsibilities along a route outside their borders be eligible for 180(c) grants on the basis of the mutual aid agreement?

(c) If so, how should the amount of funding be calculated, and should the calculation take into account whether or

not the State or Tribe would otherwise be eligible for a grant?

(d) Should the State or Tribe that received notification of eligibility from DOE indicate in their grant application that a neighboring State or Tribe has a mutual aid agreement along a particular route, whereupon DOE would then notify the neighboring State or Tribe of its eligibility?

Question 6

(a) Do assessment and planning grants need to be provided four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?

(b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?

(c) Do training grants need to be provided every year that shipments are scheduled?

Question 7

(a) Should the Section 180(c) grants be adjusted to account for fees levied by States or Tribes on the transportation of spent nuclear fuel or high-level radioactive waste through their jurisdiction?

(b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?

(c) Is the language in this policy, requiring States and Tribes to explain in their grant application how the fees and Section 180(c) grant awards are separate and distinct, sufficient to prevent DOE from paying twice for the same activity?

Question 8

(a) How should Section 180(c) grants be adjusted to reflect other funding or technical assistance from DOE or other Federal agencies for training for safe routine transportation and emergency response procedures?

(b) In particular, how should DOE account for TEPP and other similar programs that provide funding and/or technical assistance related to transportation of radioactive materials?

(c) To what extent is Section 180(c) funding necessary where funding and/or technical assistance are being or have been provided for other DOE shipping campaigns such as to DOE's Waste Isolation Pilot Plant?

Issued in Washington, DC, on October 28, 2008.

Edward F. Sproat III,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. E8–26018 Filed 10–30–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 27, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–428–007.

Applicants: ConocoPhillips Company.

Description: ConocoPhillips Co submits a supplement to the 6/27/08 market power and tariff revisions filing.

Filed Date: 10/23/2008.

Accession Number: 20081027–0134.

Comment Date: 5 pm Eastern Time on Thursday, November 13, 2008.

Docket Numbers: ER08–1417–001.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co submits First Revised Sheet No. 43 *et al.* to First Revised Rate Schedule FERC No. 184, effective October 15, 2008.

Filed Date: 10/23/2008.

Accession Number: 20081024–0162.

Comment Date: 5 pm Eastern Time on Thursday, November 13, 2008.

Docket Numbers: ER09–119–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement with PPL Renewable Energy, LLC *et al.*

Filed Date: 10/23/2008.

Accession Number: 20081024–0163.

Comment Date: 5 pm Eastern Time on Thursday, November 13, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–4–002.

Applicants: Midwest ISO Transmission Owners.

Description: Midwest ISO Transmission Owners submits revised tariff sheets that are identical to the tariff sheets included in the 8/13/08 filing, except that the attached are designated & paginated etc.

Filed Date: 10/24/2008.

Accession Number: 20081027–0181.

Comment Date: 5 pm Eastern Time on Friday, October 31, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26024 Filed 10–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 28, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–176–170.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits First Revised Sheet 33N *et al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 11/1/08.

Filed Date: 10/24/2008.

Accession Number: 20081027–0195.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 5, 2008.

Docket Numbers: RP99–301–227.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co. submits an amendment to five Rate Schedule FTS–3 negotiated rate agreements, to be effective 11/1/08.

Filed Date: 10/27/2008.

Accession Number: 20081027–0191.

Comment Date: 5 p.m. Eastern Time on Monday, November 10, 2008.

Docket Numbers: RP09–22–001.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Co submits Sixty-Seventh Revised Sheet No. 7 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 10/1/08.

Filed Date: 10/27/2008.

Accession Number: 20081027–0190.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 4, 2008.

Docket Numbers: RP09–31–000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: Great Lakes Gas Transmission Limited Partnership submits Forty-Eighth Revised Sheet 1 *et al.* to FERC Gas Tariff, Original Volume 2, to be effective 6/30/08.

Filed Date: 10/24/2008.

Accession Number: 20081027–0196.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 5, 2008.

Docket Numbers: RP09–33–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Third Revised Sheet 0 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 11/26/08.

Filed Date: 10/27/2008.

Accession Number: 20081027–0182.

Comment Date: 5 p.m. Eastern Time on Monday, November 10, 2008.

Docket Numbers: RP09–34–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corp. submits Fifty-Sixth Revised Sheet No. 27 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 11/1/08.

Filed Date: 10/27/2008.

Accession Number: 20081027–0189.

Comment Date: 5 p.m. Eastern Time on Monday, November 10, 2008.

Docket Numbers: CP09–12–000.

Applicants: The Narragansett Electric Company d/b/a National Grid.

Description: The Narragansett Electric Company d/b/a National Grid submits application for pipeline certificate authorization.

Filed Date: 10/16/2008.

Accession Number: 20081022–0370.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 12, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26025 Filed 10–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–62–000]

Erel Stillwater, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 23, 2008.

This is a supplemental notice in the above-referenced proceeding of Erel Stillwater, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 24, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by

clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25975 Filed 10–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–71–000]

OTAY Mesa Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 23, 2008.

This is a supplemental notice in the above-referenced proceeding of OTAY Mesa Energy Center, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 24, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25974 Filed 10–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2677–019]

City of Kaukauna, WI; Notice of Staff Participation in Meeting

October 23, 2008.

On November 10, 2008, Office of Energy Projects Staff will participate by teleconference in a work group meeting to discuss the proposed scope of work for the IFIM-type study being conducted for the relicensing of the Badger-Rapide Croche Hydroelectric Project (FERC No. 2677–019). The meeting will begin at 10 a.m. EST.

Interested parties wishing to attend should contact Arie DeWaal, Project Manager, Mead & Hunt, Inc., at (608) 273–6380, or via e-mail at *arie.dewaal@meadhunt.com.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–25973 Filed 10–30–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0501; FRL–8737–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting Requirements Under EPA's Green Power Partnership and Combined Heat and Power (CHP) Partnership, ICR Number 2173.02 (Renewal), OMB Control No. 2060–0578

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved information request ICR to the Office of Management and Budget (OMB) for review and approval. This ICR is scheduled to expire on April 30, 2009. Before submitting the ICR to OMB for review and approval EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Additional comments may be submitted on or before December 1, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0501, to (1) EPA online using *http://www.regulations.gov* (preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, MC 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Blaine Collison, Climate Protection Partnerships Division, Office of Atmospheric Programs, 6202J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9139; fax number: (202) 565–2134; e-mail address *collision.blaine@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 10, 2005 (70 FR 68441), EPA sought comments on this ICR

pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0501, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Reporting Requirements Under EPA's Green Power Partnership and Combined Heat and Power (CHP) Partnership.

ICR numbers: EPA ICR No. 2173.02, OMB Control No. 2060–0532.

ICR Status: This ICR is scheduled to expire on April 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: In an effort to aid implementation of the President's May 2001 National Energy Strategy, as well as the President's February 2002 Climate Change Strategy, EPA launched two new partnership programs with industry and other stakeholders: the Green Power Partnership and the Combined Heat and Power (CHP) Partnership. These voluntary partnership programs encourage organizations to invest in clean, efficient energy technologies, including renewable energy and combined heat and power. To continue to be successful, it is critical that EPA collect information from Green Power and CHP Partners to ensure these organizations are meeting their renewable energy and CHP goals and to assure the creditability of these voluntary partnership programs.

EPA has developed this ICR to obtain authorization to collect information from organizations participating in the Green Power Partnership and CHP Partnership. Organizations that join these programs voluntarily agree to the following respective actions: (1) Designating a Green Power or CHP liaison and filling out a Partnership Agreement or Letter of Intent (LOI) respectively, (2) for the Green Power Partnership, reporting to EPA, on an annual basis, their progress toward their green power commitment via a 2-page reporting form; (3) for the CHP Partnership, reporting to EPA information on their existing CHP projects and CHP development activity. EPA uses the data obtained from its partners to assess the success of these programs in achieving their national energy and greenhouse gas (GHG) reduction goals. Partners are organizational entities that have volunteered to participate in either Partnership program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to equal 5905 hours and to average 3.24 hours per year per respondent. The average number of annual burden hours on first year partners for each type of one-time response is: 8.8 hours for a Partnership Agreement (a one-time burden for Green Power); 3.5 hours for a Letter of Intent (a one-time burden for CHP Partners), 2.6 hours for the Partner Yearly Report for the GPP, 3.94 hours for the Partner Yearly Report for the CHP Partnership.

Partners from both programs may also submit voluntary updates of simple information, such as contact information or company profiles, via the Web site. These updates would take from 15 minutes to 0.5 hours per response. A subset of partners may participate in brief (i.e., 15 minute) telephone calls with EPA to clarify questions pertaining to the Partnership Agreement or LOI, Green Power Partner Yearly Report or CHP Partner project reporting. All of these activities are included in the annual burden estimate.

The estimated number of annual respondents averaged over three (3) years is 1,820 which includes an average of 1558 for the Green Power Partnership and 262 respondents for the CHP Partnership.

There are no capital or start-up costs associated with this information collection. The average annual operation and maintenance cost resulting for this collection of information is $3 per respondent. The average annual labor cost is $287 per respondent. The resulting total annual cost averaged over the three year period is $521,937. In the previous ICR the total cost averaged over the 3-year period was $298,866. The total cost estimate increase for Partners is due to an increase in the number of Partners and increases in wages.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities:

Estimated Number of Respondents: 1,820.

Frequency of Response: Annually, on Occasion, One time.

Estimated Total Annual Hour Burden: 5,905.

Estimated Total Annual Cost: $663,992, which includes $0 annualized Capital Startup costs, $5,544 annualized Operating and Maintenance (O&M) costs and $658,448 annualized Labor costs. Changes in the Estimates: Since the last ICR renewal, both the Green Power Partnership and CHP Partnership have introduced program efficiencies to reduce program burden and simplified collection forms into pre-populated spreadsheets or documents. As a result of these changes, the average number of hours per Partner has decreased from 3.4 hours to 3.24 hours but the total

hourly burden still increased because of an increase in the number of Partners. For perspective on the magnitude of partner growth, the number of Partners at the end of 2004 was 865, whereas by year-end there will be an estimated 1,286.

The total cost estimate over the 3 year period for this renewal ICR is $1,991,978, or an average of $663,992 per year, of which $16,632 is O&M costs. The total cost to GPP and CHP Partners is $1,549,178 (16,632 is O&M), or $516,393 (5,544 is O&M) per year. In the previous 2004 ICR renewal, the total cost over the 3 year period was $1,101,749. The total cost estimate increase for Partners is due to an increase in the number of Partners and increases in wages.

Dated: October 24, 2008.

Kathleen Hogan,

Director, Climate Protection Partnership Division.

[FR Doc. E8–26017 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8735–3]

California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines; Within-the-Scope Request; Opportunity for Public Hearing; Correction of Docket Number

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction.

SUMMARY: On October 7, 2008, the U.S. Environmental Protection Agency's (EPA's) Office of Air and Radiation announced an opportunity for public hearing and written comment. The notice concerns the California Air Resources Board's request seeking EPA's confirmation that its amendments affecting emission standards for three broad categories of new compression ignition engines are within the scope of previous authorizations issued by EPA. Please be advised the docket number for that notice was incorrect.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, *e-mail: Dickinson.David@EPA.GOV*.

Correction

In the **Federal Register** at 73 FR 58583 (October 7, 2008), on page 58583 (2nd column), correct the docket ID number to read EPA–HQ–OAR–2008–0670. This previous **Federal Register** notice provided instructions for submitting comments and such instructions should continue to be followed with the docket number provided by this notice.

Dated: October 22, 2008.

Robert J. Meyer,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–25793 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8587–2]

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 202–564–7157. 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. 20080326, ERP No. DS–FHW–E40165–NC, US 74 Relocation, from US–129 in Robbinsville to NC 28 in Stecoah, Funding and U.S. Army COE Section 404 Permit, Transportation Improvement Program Project No. A–9 B&C, Graham County, NC.

Summary: EPA has environmental objections to the proposed project regarding significant impacts to wetlands and high quality streams. EPA also believes there are significant and unaddressed construction impacts resulting from the proposed 2,870-foot tunnel under the Appalachian Trail at Stecoah Gap. Furthermore, EPA believes there are significant and unresolved impacts to residences, water supplies, terrestrial forests, NFS lands, aquatic habitat, air quality, and noise receptors. Rating EO2.

Final EISs

EIS No. 20080274, ERP No. F–CGD–E03017–FL, Calypso Liquefied Natural Gas (LNG) Deepwater Port License Application, Proposes to Own, Construct and Operate a Deepwater Port, Outer Continental Shelf (OCS) in the OCS NG 17–06 (Bahamas) Lease Area, 8 to 10 miles off the East Coast of Florida to the Northeast of Port Everglades, FL.

Summary: EPA expressed environmental concerns about pipeline impacts and impacts related to fuel use onboard the purpose-built Storage and Regasification Ship.

EIS No. 20080287, ERP No. F–BLM–J65490–UT, Moab Field Office Planning Area, Resource Management Plan, Implementation, Grand and San Juan Counties, UT.

Summary: EPA continues to have environmental concerns about impacts to air quality from oil and gas development, impacts from motorized vehicle travel on natural resources, and impacts on Areas of Critical Environmental Concern.

EIS No. 20080310, ERP No. F–COE–E11060–NC, West Onslow Beach and New River Inlet (Topsail Beach) Shore Protection Project, Storm Damages and Beach Erosion Reduction, Funding, Pender County, NC.

Summary: EPA continues to have environmental concerns about impacts on marine habitats and migratory species from dredging and filling. EPA requested adaptive management and water quality monitoring of the borrow areas.

EIS No. 20080316, ERP No. F–BLM–J65436–UT, Vernal Field Office Resource Management Plan, To Revise and Integrate the Book Cliff and Diamond Mountain Resource Management Plans, and Analyzing the Management of Non-Wilderness Study Area Lands with Wilderness Characteristic, Implementation, Daggett, Duchesne, Uintah, and Grand Counties, UT.

Summary: EPA continues to have environmental concerns about impacts to air quality from oil and gas development, impacts from motorized vehicle to natural resources and impacts to Areas of Critical Environmental Concern.

EIS No. 20080322, ERP No. F–NRC–E06024–GA, Vogtle Electric Generating (NUREG 1872) Plant Site, Early Site Permit (ESP), for the Construction and Operation of a new Nuclear Power Generating Facility Application Approval, Burke County, GA.

Summary: EPA continues to have environmental concern about bioentrainment and other impacts to aquatic species from surface water withdrawals and discharges.

EIS No. 20080328, ERP No. F–BLM–J65418–UT, Price Field Resource Management Plan, Selection of

Preferred Alternative D, Non-Wilderness Study Area (WSA) Lands with Wilderness Characteristics, Implementation, Carbon and Emery Counties, UT.

Summary: EPA continues to have environmental concerns about impacts to air quality from oil and gas development, impacts to Areas of Critical Environmental Concern and on wild and scenic river management.

EIS No. 20080362, ERP No. F–AFS–J65505–CO, Durango Mountain Resort Improvement Plan, Special-Use-Permits, Implementation, San Juan National Forest, La Plata and San Juan Counties, CO.

Summary: EPA continues to have environmental concerns about potential adverse impacts to water quality, wetlands, especially forested wetlands, and lynx habitat.

EIS No. 20080363, ERP No. F–AFS–K65277–CA, Modoc National Forest Noxious Weed Treatment Project, Proposes to Implement a Control and Eradication Project, Lassen, Modoc and Siskiyou Counties, CA.

Summary: EPA continues to have environmental concerns about potential impacts to groundwater from herbicides with high leaching potential.

EIS No. 20080376, ERP No. F–NOA–K39102–CA, Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries, Proposes a Series of Regulatory Changes, Offshore of Northern/Central, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080387, ERP No. F–NPS–J61112–CO, Curecanti National Recreation Area Resource Protection Study, Gunnison and Montrose Counties, CO.

Summary: No formal comment letter was sent to the preparing agency.

Dated: October 28, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–26031 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8587–1]

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 10/20/2008 through 10/24/2008.

Pursuant to 40 CFR 1506.9.

EIS No. 20080432, Draft EIS, COE, LA, Mississippi River-Gulf Outlet (MRGO), Louisiana, and Lake Borgne Wetland Creation and Shoreline Protection Project, Proposes to Construct Shoreline Protection Features Along the Lake Borgne Shoreline to Restore and Nourish Wetlands, Lake Borgne, LA, Comment Period Ends: 12/15/2008, Contact: Dr. William P. Klein 504–862–2540.

EIS No. 20080433, Final EIS, COE, 00, Programmatic—Port of New York and New Jersey Dredged Material Management Plan, 2008 Updated Information, Implementation, NY and NJ, Wait Period Ends: 12/01/2008, Contact: Christopher Ricciardi, Ph.D. 917–790–8630.

EIS No. 20080434, Draft EIS, FTA, TX, Southwest-to-Northeast Rail Corridor Project, Transportation Improvements in the Cities of Fort Worth, Haltom City, North Richland Hills, Colleyville, and Grapevine, Funding and U.S. Army COE Section 404 Permit, Tarrant County, TX, Comment Period Ends: 12/15/2008, Contact: Robert C. Patrick 817–978–0550.

EIS No. 20080435, Draft EIS, FHW, MS, MS–601 Transportation Project, Extension of MS–601 from I–10 Canal Interchange to Connect with U.S. 49, Funding, Harrison and Stone Counties, MS, Comment Period Ends: 12/15/2008, Contact: Cecil W. Vick, Jr. 601–965–4217.

EIS No. 20080436, Draft EIS, FHW, CO, North 1–25 Corridor, To Identify and Evaluate Multi-Modal Transportation Improvement along 61 miles from the Fort Collins-Wellington Area, Funding and U.S. Army COE Section 404 Permit, Denver, CO, Comment Period Ends: 12/30/2008, Contact: Monica Pavlik 720–963–3012.

EIS No. 20080437, Final EIS, NPS, WA, San Juan Island National Historical Park, General Management Plan, Implementation, WA, Wait Period Ends: 12/01/2008, Contact: Cheryle Teaque 206–220–4112.

EIS No. 20080438, Final EIS, FHW, CA, Doyle Drive Project, South Access to the Golden Gate Bridge, Propose to Improve Seismic, Structural, and Traffic Safety, Presidio of San Francisco, San Francisco County Transportation Authority, Marin and San Francisco Counties, CA, Wait Period Ends: 12/01/2008, Contact: Cesar E. Perez 916–498–5065.

EIS No. 20080439, Draft EIS, BLM, OR, John Day Basin Resource Management Plan, To Provide Direction for Managing Public Lands in Central and Eastern Oregon, Prineville District, Grant, Wheeler, Gilliam, Wasco, Sherman, Umatilla, Jefferson and Morrow Counties, OR, Comment Period Ends: 01/29/2009, Contact: Anna Smith 541–416–6747.

Amended Notices

EIS No. 20080327, Draft EIS, FHW, MT, Russell Street/South 3rd Street Reconstruction Project, To Address Current and Projected Safety and Operational Needs, Funding and U.S. Army COE Section 404 Permit, City of Missoula, Missoula County, MT, Comment Period Ends: 11/04/2008, Contact: Lloyd H. Rue 406–449–5302.

Revision to FR Notice Published 08/29/2008: Extending Comment Period from 10/20/2008 to 11/04/2008.

EIS No. 20080422, Draft EIS, FTA, MD, Purple Line Transit Project, Proposed 16-Mile Rapid Transit Line Extending from Bethesda in Montgomery County to New Carrollton in Prince George's County, MD, Comment Period Ends: 01/14/2009, Contact: Gail McFadden-Roberts 215–656–7100.

Revision to FR Notice Published 10/17/2008: Extending Comment Period from 12/01/2008 to 01/14/2009.

Dated: October 28, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–26028 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008-0776; FRL–8387–7]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 3–5, 2008, in San Diego, CA. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acrylonitrile, allyl alcohol, aluminum chloride, antimony pentafluoride, bromoacetone, dichlorodimethyl silane,

dichlorvos, dicrotophos, fenamiphos, malathion, methyl iodide, methyl trichlorosilane, mevinphos, nitrogen trifluoride, phosphorus pentafluoride, ricin, tear gas, tetrachloroethylene, and trimethylchlorosilane.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5:30 p.m. on December 3, 2008; from 8 a.m. to 5:30 p.m. on December 4, 2008; and from 8 a.m. to noon on December 5, 2008.

ADDRESSES: The meeting will be held at the Holiday Inn on the Bay, 1355 North Harbor Dr., San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

To request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2008–0776. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for Spring 2009.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: October 24, 2008.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E8–26034 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2008–0779, FRL–8737–1]

Camp Branch Road Mercury Site Waynesville, Haywood County, NC; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for past cost concerning the Camp Branch Road Mercury Superfund Site located in Waynesville, Haywood County, North Carolina for publication.

DATES: The Agency will consider public comments on the settlement until December 1, 2008. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2008–0779 or Site name Camp Branch Road Mercury Superfund Site by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Painter.Paula@epa.gov*.
- *Fax:* 404/562–8842/Attn: Paula V. Painter.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: October 15, 2008.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E8–26008 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2008–0792, FRL–8736–9]

Starmet CMI Superfund Site, Barnwell, Barnwell County, SC; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Starmet CMI Superfund Site located in Barnwell, Barnwell County, South Carolina for publication.

DATES: The Agency will consider public comments on the settlement until December 1, 2008. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2008–0792 or Site name Starmet CMI Superfund Site by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Painter.Paula@epa.gov*.
- *Fax:* 404/562–8842/Attn: Paula V. Painter.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: October 20, 2008.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E8–26019 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2004–0122; FRL–8386–6]

Toxic Substances Control Act Inventory Status of Carbon Nanotubes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document gives notice of the Toxic Substances Control Act (TSCA) requirements potentially applicable to carbon nanotubes (CNTs). EPA generally considers CNTs to be chemical substances distinct from graphite or other allotropes of carbon listed on the TSCA Inventory. Many CNTs may therefore be new chemicals under TSCA section 5. Manufacturers or importers of CNTs not on the TSCA Inventory must submit a premanufacture notice (PMN) (or applicable exemption) under TSCA section 5 where required under 40 CFR part 720 or part 723. In order to determine the TSCA Inventory status of a CNT, a manufacturer may submit to EPA a *bona fide* intent to manufacture or import under 40 CFR 720.25.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use CNTs that are chemical substances subject to the jurisdiction of TSCA. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (NAICS code 325), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.
- Petroleum and coal product industries (NAICS code 324), e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2004–0122. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access information about the TSCA program on-line at *http://www.epa.gov/oppt*.

II. Background

Pursuant to TSCA section 5(a)(1), any person manufacturing (including importing) a new chemical substance must file with EPA a PMN (or applicable exemption) at least 90 days prior to manufacture, unless the substance is excluded from PMN reporting. See 40 CFR part 720 regarding when reporting is required.

CNTs are considered chemical substances subject to the jurisdiction of TSCA unless and to the extent they are within the classes of materials specified in TSCA section 3(2)(B) as outside the jurisdiction of TSCA, such as pesticides, foods, drugs, and cosmetics. For example, nanoscale materials used in drugs are subject to the jurisdiction of the U.S. Food and Drug Administration.

EPA has taken steps to inform manufacturers that CNTs may require notification under TSCA section 5. EPA has made numerous public statements and responses to written inquiries indicating that CNTs are not necessarily identical to graphite or other allotropes of carbon. Manufacturers have been encouraged to submit a *bona fide* intent to manufacture or import, to submit a notice under TSCA section 5 (where required), or contact the Agency with additional questions. On July 12, 2007 (72 FR 38081) (FRL–8139–9) and January 28, 2008 (73 FR 4861) (FRL–8344–5), EPA issued **Federal Register** notices which reference a paper, TSCA Inventory Status of Nanoscale Substances—General Approach. EPA stated in that document that CNTs might not have the same molecular identity as non-nanoscale allotropes of carbon. EPA has received and is reviewing several PMNs for CNTs as new chemical substances.

Despite these efforts, current pre-notice inquiries to the Agency and questions in public forums still indicate a lack of clarity on this issue. Some of the misunderstanding may be the result of an EPA communication to a chemical manufacturer a number of years ago pertaining to a substance the Agency now considers to be a carbon nanotube material. EPA's initial response, which was specific to that inquiry and based upon the information presented at the time, was that the material was already on the TSCA Inventory. EPA has since notified that manufacturer that a PMN is required for that carbon nanotube material. Nonetheless, the Agency understands that the earlier communication may have been misunderstood by some companies as a possible indication that all CNTs may be equivalent to other allotropes of carbon for purposes of the TSCA Inventory.

This document is intended to give notice of the potential TSCA requirements applicable to CNTs. If a particular CNT is not on the TSCA Inventory, anyone who intends to manufacture or import that CNT is required to submit a PMN (or applicable exemption) under TSCA section 5 at least 90 days before commencing manufacture. Manufacturers may submit a *bona fide* intent to manufacture or import under 40 CFR 720.25 to determine whether a specific CNT is on the TSCA Inventory. Companies may also contact the Agency with specific questions. EPA strongly recommends that persons who currently manufacture CNTs for commercial purposes determine whether their CNTs are on the TSCA Inventory and in compliance with the TSCA section 5 requirements.

EPA continues to enforce TSCA consistent with its other priorities. Some time after March 1, 2009, EPA anticipates focusing its compliance monitoring efforts to determine if companies are complying with TSCA section 5 requirements for carbon nanotubes.

If you have further questions regarding notification requirements for CNTs, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Carbon nanotubes, Chemicals, hazardous substances, Nanoscale materials.

Dated: October 27, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–26026 Filed 10–30–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Tuesday, November 4, 2008

October 28, 2008.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 4, 2008, which is scheduled to commence at 11 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. With respect only to item #5 listed below, the Commission is waiving the sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 CFR 1.1203, until 5:30 pm, Friday, October 31, 2008. Thus, presentations with respect to item #5 will be permitted until that time.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* High-cost Universal Service Support (WC Docket No. 05–337); Federal-State Joint Board on Universal Service (CC Docket No. 96–45); Lifeline and Link Up (WC Docket No. 03–109); Universal Service Contribution Methodology (WC Docket No. 06–122); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01–92); Intercarrier Compensation for ISP-Bound Traffic (CC Docket No. 99–68); and IP-Enabled Services (WC Docket No. 04–36). *Summary:* The Commission will consider a Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking addressing the comprehensive reform of intercarrier compensation and universal service.
2	Wireless Telecommunications	*Title:* Applications of Union Telephone Company; Cellco Partnership d/b/a Verizon Wireless For 700 MHz Band Licenses, Auction No. 73. *Summary:* The Commission will consider a Memorandum Opinion and Order addressing the Auction 73 applications of Cellco Partnership d/b/a Verizon Wireless and Union Telephone Company, and a Petition to Condition Grant filed by Google Inc. and Google Airwaves Inc.

Item No.	Bureau	Subject
3	Wireless Telecommunications	*Title:* Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC (WT Docket No. 08–95); For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and DeFacto Transfer Leasing Arrangements; and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act *Summary:* The Commission will consider a Memorandum Opinion and Order and Declaratory Ruling addressing applications for transfer of licenses, authorizations, and spectrum leasing arrangements filed by Verizon Wireless and Atlantis Holdings.
4	Wireless Telecommunications	*Title:* Sprint Nextel Corporation and Clearwire Corporation; Applications For Consent to Transfer Control of Licenses and Authorizations (WT Docket No. 08–94) *Summary:* The Commission will consider a Memorandum Opinion and Order addressing applications for transfer of control of licenses, authorizations, and spectrum leases filed by Sprint Nextel Corporation and Clearwire Corporation and their subsidiaries.
5	Office of Engineering and Technology	*Title:* Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186); and Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band (ET Docket No. 02–380) *Summary:* The Commission will consider a Second Report and Order and Memorandum Opinion and Order to consider rules for operation of low power devices in the broadcast television spectrum.
6	Media	*Title:* Digital Television Distributed Transmission System Technologies (MB Docket No. 05–312) *Summary:* The Commission will consider a Report and Order to adopt rules for the use of distributed transmission system (''DTS'') technologies in the digital television (''DTV'') service.
7	Consumer & Governmental Affairs	*Title:* Closed Captioning of Video Programming (CG Docket 05–231); and Closed Captioning Requirements for Digital Television Receivers (ET Docket No. 99–254) *Summary:* The Commission will consider a Declaratory Ruling and Order concerning the application of the Commission's closed captioning requirements to digital programming, as well as measures regarding the handling and addressing of consumer concerns and complaints regarding closed captioning.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request.

Include a description of the accommodation you will need. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–26143 Filed 10–29–08; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act. The FTC is seeking public comments on its proposal to extend through February 28, 2012, the current PRA clearances for information collection requirements contained in four product labeling rules enforced by the Commission. Those clearances expire on February 28, 2009.

DATES: Comments must be received by December 30, 2008.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Apparel Rules: FTC File No. P074201'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at *http://www.ftc.gov/os/publiccomments.shtm* — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C.

46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2) (2008). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-apparelrules*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-apparelrules*). If this notice appears at (*www.regulations.gov*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Connie Vecellio and Matthew Wilshire, Attorneys, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326-2996.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501-3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements associated with the Commission's regulations under the Fur Act, 16 CFR Part 301 (OMB Control Number 3084-0099); regulations under the Wool Act, 16 CFR Part 300 (OMB Control Number 3084-0100); regulations under the Textile Act, 16 CFR Part 303 (OMB Control Number 3084-0101); and the Care Labeling Rule, 16 CFR 423 (OMB Control Number 3084-0103). The FTC invites comments 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, 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 30, 2008.

Staff's burden estimates for the four rules in question are based on data from the Department of Commerce's Bureau of the Census, the International Trade Commission, the Department of Labor's Bureau of Labor Statistics (''BLS''), and data or other input from industry sources. The relevant information collection requirements within these rules and corresponding burden estimates follow.

1. Regulations under the Fur Products Labeling Act, 15 U.S.C. 69 et seq. (''Fur Act''), 16 CFR Part 301 (OMB Control Number: 3084-0099).

The Fur Act prohibits the misbranding and false advertising of fur products. The Fur Act Regulations, 16 CFR 301, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing these regulations. The Regulations also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

Estimated annual hours burden: 121,000 hours, rounded the nearest thousand (50,414 hours for recordkeeping + 70,226 hours for disclosure).

Recordkeeping: The Regulations require that retailers, manufacturers, processors, and importers of furs and fur products keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 1,150 retailers incur an average recordkeeping burden of about 13 hours per year (14,950 hours total); 82 manufacturers and fur processors combined incur an average recordkeeping burden of about 52 hours per year (4,264 total); and 1,200 importers of furs and fur products incur an average recordkeeping burden of 26 hours per year (31,200 hours total). The combined recordkeeping burden for the industry is approximately 50,414 hours annually.

Disclosure: Staff estimates that 1,220 respondents (70 manufacturers + 1,150 retail sellers of fur garments) each require an average of 20 hours per year to determine label content (24,400 hours total), and an average of five hours per year to draft and order labels (6,100 hours total). Staff estimates that the total number of garments subject to the fur labeling requirements annually is approximately 886,577.[2] Staff estimates that for approximately 50 percent of these garments (443,289) labels are attached manually, requiring approximately four minutes per garment for a total of 29,553 hours annually. For the remaining 443,288, the process of attaching labels is semi-automated and requires an average of approximately two seconds per item, for a total of 246 hours. Thus, the total burden for attaching labels is 29,799 hours, and the total burden for labeling garments is 60,299 hours per year (24,400 hours to determine label content + 6,100 hours to draft and order labels + 29,799 hours to attach labels).

Staff estimates that the incremental burden associated with the Regulations' invoice disclosure requirement, beyond the time that would be devoted to

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c) (2008).

[2] The total number of fur garments, fur-trimmed garments, and fur accessories is estimated to be approximately 1,019,054, based on International Trade Commission data. Of that number, approximately 132,477 items are estimated to be exempt from the labeling requirements pursuant to 16 CFR 301.39 (items where either the cost of the fur trim to the manufacturer or the manufacturer's selling price for the finished product is less than $150 are exempt).

preparing invoices in its absence, is approximately 30 seconds per invoice.[3] The invoice disclosure requirement applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Based on information from the International Trade Commission and the Fur Commission USA, staff estimates a total of 8,333,865 pelts annually. Assuming invoices are prepared for sales of 886,577 garments and 166,677 groups (derived from an estimated 8,333,865 million pelts ÷ 50) each of imported and domestic pelts, the invoice disclosure requirement entails an estimated total burden of 8,777 hours (1,053,254 total invoices x 30 seconds).

Staff estimates that the Regulations' advertising disclosure requirements impose an average burden of one hour per year for each of the approximately 1,150 domestic fur retailers, or a total of 1,150 hours.

Thus, staff estimates the total disclosure burden to be approximately 70,226 hours (60,299 hours for labeling + 8,777 hours for invoices + 1,150 hours for advertising).

Estimated annual cost burden: $1,911,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly Rate	Burden Hours	Labor Cost
Determine label content	$22.00	24,400	$536,800
Draft and order labels	$16.27	6,100	$99,247
Attach labels	$9.50[4]	29,799	$283,091
Invoice disclosures	$16.27	8,777	$142,802
Prepare advertising disclosures	$25.00	1,150	$28,750
Recordkeeping	$16.27	50,414	$820,236
TOTAL			$1,910,926

[4] Per industry sources, most fur labeling is done in the United States. This rate is reflective of an average domestic hourly wage for such tasks, which is derived from recent BLS statistics. Conversely, attaching labels with regard to the others regulations discussed herein is mostly performed by foreign labor, as detailed in note 5.

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing Regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Regulations.

2. Regulations under the Wool Products Labeling Act, 15 U.S.C. 68 et seq. (''Wool Act''), 16 CFR Part 300 (OMB Control Number: 3084-0100).

The Wool Act prohibits the misbranding of wool products. The Wool Act Regulations, 16 CFR 300, establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Regulations.

Estimated annual hours burden: 440,000 hours, rounded to the nearest thousand (80,000 recordkeeping hours + 360,000 disclosure hours).

Recordkeeping: Staff estimates that approximately 4,000 wool firms are subject to the Regulations' recordkeeping requirements. Based on an average annual burden of 20 hours per firm, the total recordkeeping burden is 80,000 hours.

Disclosure: Approximately 8,000 wool firms, producing or importing about 600,000,000 wool products annually, are subject to the Regulations' disclosure requirements. Staff estimates the burden of determining label content to be 15 hours per year per respondent, or a total of 120,000 hours, and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 40,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 360,000,000 items (60 percent of 600,000,000), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 200,000 hours per year. Thus, the total estimated annual burden for all respondents is 360,000 hours (120,000 hours for determining label content + 40,000 hours to draft and order labels + 200,000 hours to attach labels). Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $5,702,000, rounded to the nearest thousand (solely relating to labor costs).

[3] The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Act Regulations, in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

Task	Hourly Rate	Burden Hours	Labor Cost
Determine label content	$22.00	120,000	$2,640,000
Draft and order labels	$16.27	40,000	$650,800
Attach labels	$5.55[5]	200,000	$1,110,000
Recordkeeping	$16.27	80,000	$1,301,600
TOTAL			$5,702,400

[5] For products that are imported, this work generally is done in the country where they are manufactured. According to information compiled by an industry trade association using data from the International Trade Commission, the U.S. Customs Service, and the U.S. Census Bureau, approximately 95% of apparel and other textile products used in the United States is imported. With the remaining 5% attributable to U.S. production at an approximate domestic hourly wage of $9.50 to attach labels, staff has calculated a weighted average hourly wage of $5.55 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for 2007 compiled by the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on 2006 data from the U.S. Department of Labor, Bureau of International Labor Affairs. *See* ''International Comparisons of Hourly Compensation Costs for Production Workers in Manufacturing,'' Table 1, available at: *http://www.bls.gov/fls/hcpwsupptabtoc.htm*.

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of wool products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations. Based on knowledge of the industry, staff believes that much of the information required by the Wool Act and its implementing regulations would be included on the product label even absent their requirements. Similarly, recordkeeping and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

3. Regulations under The Textile Fiber Products Identification Act, 15 U.S.C. 70 et seq. (''Textile Act''), 16 CFR Part 303 (OMB Control Number: 3084-0101).

The Textile Act prohibits the misbranding and false advertising of textile fiber products. The Textile Act Regulations, 16 CFR 303, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Regulations. The Regulations also contain a petition procedure for requesting the establishment of generic names for textile fibers.

Estimated annual hours burden: approximately 8,456,000 hours, rounded to the nearest thousand (623,400 recordkeeping hours + 7,832,842 disclosure hours).

Recordkeeping: Staff estimates that approximately 24,936 textile firms are subject to the Textile Regulations' recordkeeping requirements. Based on an average burden of 25 hours per firm, the total recordkeeping burden is 623,400 hours.

Disclosure: Approximately 26,647 textile firms, producing or importing about 21.5 billion textile fiber products annually, are subject to the Regulations' disclosure requirements.[6] Staff estimates the burden of determining label content to be 20 hours per year per respondent, or a total of 532,940 hours and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 133,235 hours.[7] Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 12.9 billion items (60 percent of 21.5 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 7,166,667 hours per year. Thus, the total estimated annual burden for all respondents is 7,832,842 hours (532,940 hours to determine label content + 133,235 hours to draft and order labels + 7,166,667 hours to attach labels).[8] Staff believes that any additional burden associated with advertising disclosure requirements or the filing of generic fiber name petitions would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $63,810,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly Rate	Burden Hours	Labor Cost
Determine label content	$22.00	532,940	$11,724,680
Draft and order labels	$16.27	133,235	$2,167,733
Attach labels	$5.55[9]	7,166,667	$39,775,002
Recordkeeping	$16.27	623,400	$10,142,718
TOTAL			$63,810,133

[9] *See* note 5.

[6] The apparent consumption of garments in the U.S. in 2007 was 20.1 billion. Staff estimates that 1 billion garments are exempt from the Textile Act (*i.e.*, any kind of headwear and garments made from something other than a textile fiber product, such as leather) or are subject to a special exemption for hosiery products sold in packages where the label information is contained on the package. Based on available data, staff estimates that an additional 3 billion household textile products (non-garments, such as sheets, towels, blankets) were consumed. However, approximately 0.6 billion of all of these combined products (garments and non-garments) are subject to the Wool Products Labeling Act, not the Textile Fiber Products Identification Act, because they contain some amount of wool. Thus, the estimated net total products subject to the Textile Fiber Products Identification Act is 21.5 billion.

[7] In 2007, Congress amended the Wool Act to explicitly define ''cashmere'' and certain terms used to describe superfine wool (*e.g.*, ''Super 80s,'' ''Super 90s,'' etc.). *See* Pub. L. 109-428. The Commission anticipates revising the wool Regulations to incorporate these amendments. The Commission will seek comment on the increased burden, if any, imposed by these changes when it announces the revisions.

[8] The Commission revised the Textile Act Regulations in 2006 in response to amendments to the Textile Act. *See* 70 Fed. Reg. 73369 (Dec. 12, 2005). These amendments concerned the placement of labels on packages of certain types of socks and, therefore, do not place any additional disclosure burden on covered entities.

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Textile Act and its implementing rules would be included on the product label even absent their requirements. Similarly, recordkeeping, invoicing, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

4. The Care Labeling Rule, 16 CFR Part 423 (OMB Control Number: 3084-0103).

The Care Labeling Rule, 16 CFR Part 423, requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimated annual hours burden: 7,566,000 hours, rounded to the nearest thousand (solely relating to disclosure[10]).

Staff estimates that approximately 26,647 manufacturers or importers of textile apparel, producing about 20.1 billion textile garments annually, are subject to the Rule's disclosure requirements. The burden of developing proper care instructions may vary greatly among firms, primarily based on the number of different lines of textile garments introduced per year that require new or revised care instructions. Staff estimates the burden of determining care instructions to be 43 hours each year per respondent, for a cumulative total of 1,145,821 hours. Staff further estimates that the burden of drafting and ordering labels is 2 hours each year per respondent, for a total of 53,294 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 40 percent of the approximately 19.1 billion garments that are required to have care instructions on permanent labels.[11] For the remaining 11.46 billion items (60 percent of 19.1 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 6,366,667 hours per year. Thus, the total estimated annual burden for all respondents is 7,565,782 hours (1,145,821 hours to determine care instructions + 53,294 hours to draft and order labels + 6,366,667 hours to attach labels).

Estimated annual cost burden: $61,407,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly Rate	Burden Hours	Labor Cost
Determine care instructions	$22.00	1,145,821	$25,205,062
Draft and order labels	$16.27	53,294	$867,093
Attach labels	$5.55[12]	6,366,667	$35,335,002
TOTAL			$61,407,157

[12] *See* note 5.

Staff believes that there are no current start-up costs or other capital costs associated with the Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the product label even absent those requirements.

David C. Shonka,

Acting General Counsel

[FR Doc. E8–26058 Filed 10–30–08: 8:45 am]

[BILLING CODE: 6750–01–S]

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/01/2008			
20081732	Robert B. Cohen	Dufry AG	Dufry AG.
20081805	GTEL Holding LLC	GTEL Holdings, Inc	GTEL Holdings, Inc.

[10] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies may provide as support current technical literature or rely on past experience.

[11] About 1 billion of the 20.1 billion garments produced annually are either not covered by the Care Labeling Rule (gloves, hats, caps, and leather, fur, plastic, or leather garments) or are subject to an exemption that allows care instructions to appear on packaging (hosiery).

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/03/2008			
20081590	Donald E. Graham	General Electric Company	NBC Stations Management II, Inc., NBC Subsidiary, (WTVJ–TV), Inc., NBC Universal, Inc.
20081749	Arch Chemicals, Inc	Rockwood Holdings, Inc	Advantis Technologies, Inc.
20081804	EPCOR Power L.P	Mitsubishi Corporation	Morris Cogeneration, LLC.
20081807	Opnext, Inc	StrataLight Communications, Inc	StrataLight Communications, Inc.
20081808	Rock Hill Telephone Company	Citizens Telephone Company	Citizens Telephone Company.
20081810	ES Media Works Fund I, LP	Commonwealth Bank of Australia	First State Media Group Limited.
20081813	DSMUS Trust	Robert C. McNair	Stonerside Stable LLC.
20081826	Mitsubishi UFJ Financial Group, Inc	Morgan Stanley	Morgan Stanley.
Transactions Granted Early Termination—10/06/2008			
20081747	H&R Block, Inc	Michael Dean Merriman 1965–A Trust.	Block Management, LLC, H&R Block, LLC, HRBO III, LLC, HRBO, LLC.
20081748	H&R Block, Inc	Pamela Jo Merriman 1965–A Trust	Block Management, LLC, H&R Block, LLC, HRBO III, LLC, HRBO, LLC.
20081754	H&R Block, Inc	H&R Block of Houston, LLC	Houston Block, L.C.
20081761	John K. Delaney	CapitalSource Inc	CapitalSource Inc.
Transactions Granted Early Termination—10/07/2008			
20081792	USPF III Leveraged Feeder, L.P	Peter H. Zeliff, Sr	Innovative Energy Systems, LLC.
20081799	IHS Inc	Joseph E. Kasputys	Global Insight, Inc.
20081818	William S. Morris III and Mary Sue Ellis Morris.	Rocco B. Commisso	SplitCo.
Transactions Granted Early Termination—10/09/2008			
20081786	Inversion Corporativa I.C., S.A	DTN Holding Company, Inc	DTN Holding Company, Inc.
20081789	Zimmer Holdings, Inc	Abbott Laboratories	Abbott Spine, Inc.
20081816	ASP IV Alternative Investments, L.P	Liberty Tire Services, LLC	Liberty Tire Services, LLC.
20090021	Wells Fargo & Company	Wachovia Corporation	Wachovia Corporation.
Transactions Granted Early Termination—10/10/2008			
20081830	Sappi Limited	Metsaliitto Cooperative	M-real Corporation.
20081831	Foot Locker, Inc	dELIA's, Inc	dELIA's, Inc.
20081832	Enterprise Products Partners L. P	EnCana Corporation	Great Divide Gathering, LLC.
20090013	GHL Acquisition Corp	Iridium Holdings LLC	Iridium Holdings LLC.
Transactions Granted Early Termination—10/14/2008			
20081763	GDF SUEZ	FirstLight Power Enterprises, Inc	FirstLight Power Enterprises, Inc.
20081822	Westinghouse Air Brake Technologies Corporation.	Russell Enterprises, Inc	Standard Car Truck Company.
20081827	Bank of America Corporation	Merrill Lynch & Co., Inc	Merrill Lynch & Co., Inc.
Transactions Granted Early Termination—10/15/2008			
20081800	Kuwait Petroleum Corporation	K-Dow Petrochemicals C.V	K-Dow Petrochemicals C.V.
20081823	Cameron International Corporation	Kenneth L. Bums, II	Burnsco Blowout Preventer Sales & Service, Inc., Hitech, Inc. Kencoy, Inc., Melco Blowout Preventer Specialties, Inc., Townsend International BOPs, Inc.
20090006	McAfee, Inc	Secure Computing Corporation	Secure Computing Corporation.
Transactions Granted Early Termination—10/16/2008			
20081793	Altria Group, Inc	UST Inc	UST Inc.
20081794	The Voting Trust	Morgan Stanley	Cournot Financial Products LLC.
20090012	Equity Investor Acquisition LLC	Estate of Anthony A. Martino	Hatboro Cosmollision, Inc., Maaco Enterprises, Inc.
20090020	BTG plc	Protherics plc	Protherics plc.

For Further Information Contact: Sandra M. Peay, Contact Representative, or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–

303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–26037 Filed 10–30–08; 8:45 am]

BILLING CODE 6750–01–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: ''AHRQ Healthcare Innovations Exchange Innovator Interview and AHRQ Healthcare Innovations Exchange Innovator E-mail Submission Guidelines.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 2008 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 1, 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

''AHRQ Healthcare Innovations Exchange Innovator Interview and AHRQ Healthcare Innovations Exchange Innovator E-mail Submission Guidelines''

To support its objective of accelerating the diffusion and adoption of innovative health care delivery changes, see, e,g, 42 U.S.C. 299b–5(a), the Agency for Healthcare Research and Quality (AHRQ) is launching the AHRQ Healthcare Innovations Exchange web site (Innovations Exchange). The Innovations Exchange will make profiles of health care service innovations accessible to the public. These innovations must meet the following six criteria: (1) The innovation focuses directly or indirectly on patient care; (2) the innovation is intended to improve one or more domains of health care quality; (3) the activity is truly innovative in the context of its setting or target population; (4) information about the innovation is publicly available; (5) the innovator (or a representative) is willing and able to contribute information to the Health Care Innovations Exchange; and (6) there is reason to believe that the innovation will be effective. These are minimum requirements. The ultimate decision to publish a detailed profile of the innovation will depend on several factors, including an evaluation by AHRQ, AHRQ's priorities, and the number of similar ideas in the Innovations Exchange. AHRQ's priorities include identifying and highlighting innovations that will help reduce disparities in health care and health status, that will have significant impact on the overall value of health care, where the innovators have a strong interest in participating, and that have received support from AHRQ.

A purposively selected group of 825 health care innovations will be selected to be considered for the profiles that will be published on the Innovations Exchange. These 825 innovations will be selected to ensure that innovations included in the Innovations Exchange cover a broad range of health care settings, care processes, priority populations, and clinical conditions. To collect the information required for these profiles, approximately 825 health care innovators associated with these innovations will submit information on their innovation using the AHRQ Healthcare Innovations Exchange E-mail Submission Guidelines or be contacted by project staff. Innovators will be interviewed by telephone about their innovative activities.

Method of Collection

Approximately 825 innovators associated with innovations selected for consideration will either submit their innovation through e-mail for consideration or be contacted by telephone and asked to participate. Once their agreement to participate is secured, the innovators will be interviewed by telephone as needed (e-mail submitters will be instructed to provide specific information about their innovation in their initial submissions and may require only abbreviated telephone interviews) about the following aspects of their innovation: health care problem addressed, impetus for the innovation, goals of the innovation, description of the innovation, evaluation results for the innovation, setting for the innovation, history of planning and implementation for the innovation, and lessons learned concerning the implementation of the innovation. If the innovation is approved, a draft profile will be developed based on the information and sent by e-mail to the innovator for review and approval to publish. After the profile is published, on a yearly basis, innovators will be asked to review and update their profiles. No assurances of confidentiality will be made to the innovator.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents. Approximately 275 innovators will participate in the initial data collection each year for a total of 825 over the three year period. Of the 275 respondents per year we estimate that approximately 15% (41) will submit information via e-mail and will thus be interviewed for a shorter period of time. The remaining 234 respondents that did not submit information via e-mail will be interviewed more extensively to capture the information required. The estimated annualized hours for the respondents' time to participate in the project is 401 hours.

Based on a review of materials from potential innovations we estimate that approximately 10% of the candidate innovations either will not meet the inclusion criteria or their innovators will decide not to continue their participation. Therefore, about 90% (750) of the original 825 profiles will move into the publication stage.

For the 750 published profiles, annual follow-up interviews will be conducted to update the information about the innovation, which will average 30 minutes. Because the profiles will be prepared on a rolling basis over three

years, the average number of yearly follow-up reviews per innovator will vary:

- One third (250) of the profiles will be prepared in the first year and will have 2 annual reviews;
- One third (250) of the profiles will be prepared in the second year and will have 1 annual review; and,
- One third (250) of the profiles will be prepared in the third year and will have 0 annual reviews.

Approximately 750 follow-up interviews will be conducted over the 3 years of this project resulting in an annualized average of 250 follow-up interviews per year, even though no follow-up interviews will be conducted in the first year.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Email submission	41	1	30/60	21
Health care innovator interview—following email submission	41	1	30/60	21
Health care innovator interview—without email submission	234	1	1	234
Annual follow-up interview	250	1	30/60	125
Total	566			401

Exhibit 2 shows the estimated annualized cost burden for the respondents. The Bureau of Labor Statistics reported that the average hourly wage for ''healthcare practitioner and technical occupations'' in the United States was $29.82 in May 2006. An estimate of $30 per hour allows for inflation and represents a conservative estimate of the wages of the respondents. Therefore, the total estimated cost burden for respondents is $12,030, based on the total estimated annualized burden of 401 hours.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Email submission	41	21	$30	$630
Health care innovator interview—following email submission	41	21	30	630
Health care innovator interview—without email submission	234	234	30	7,020
Annual follow-up interview	250	125	30	3,750
Total	566	401		12,030

* Based upon the average wages, ''National Compensation Survey: Occupational Wages in the United States, May 2006,'' U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost to the Government is approximately $3,349,560 over three years (on average, $1,116,520 per year). These costs cover the total editorial and content development processes associated with the project; which include developing an on-line authoring tool for preparing the profiles, identifying innovation leads, reviewing e-mail submissions, contacting the innovators, conducting interviews, preparing the draft profiles, securing innovator approval, and publishing the profiles on the Innovations Exchange Web site.

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: October 20, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–25836 Filed 10–30–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Implementation Research for the Management of Malaria and Childhood Illness in Rural Areas of the United Republic of Tanzania, Funding Opportunity Announcement (FOA) CK09–006

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.–2 p.m., January 12, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director,

Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Implementation Research for the Management of Malaria and Childhood Illness in Rural Areas of the United Republic of Tanzania, FOA CK09–006.''

Contact Person for More Information: Wendy Carr, Ph.D., Health Scientist, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop E–77, Atlanta, GA 30333, Telephone: (404) 498–2276.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–26016 Filed 10–30–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–65]

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:* Information Collection Requirements in Final Peer Review Organizations Sanction Regulations—42 CFR 1004.4, 1004.50, 1004.60, and 1004.70; *Use:* The Peer Review Improvement Act of 1982 amended Title XI of the Social Security Act (the Act), creating the Utilization and Quality Control Peer Review Organization Program. Section 1156 of the Act imposes obligations on health care practitioners and others who furnish or order services or items under Medicare. This section also provides for sanction actions, if the Secretary determines that the obligations as stated by this section are not met. Quality Improvement Organizations (QIOs) are responsible for identifying violations. QIOs may allow practitioners or other entities, opportunities to submit relevant information before determining that a violation has occurred. The information collection requirements contained in this information collection request are used by the QIOs to collect the information necessary to make their decision. *Form Number:* CMS–R–65 (OMB #0938–0444); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 53; *Total Annual Responses:* 53; *Total Annual Hours:* 14,310.

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 December 1, 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: October 24, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–25922 Filed 10–30–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1557 and CMS–437A and B]

Agency Information Collection Activities: Proposed Collection; 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) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form for Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001; *Use:* This form is used by the State to determine a laboratory's compliance with CLIA. This information is needed for a laboratory's CLIA certification and recertification. *Form Number:* CMS–1557 (OMB# 0938–0544); *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Governments and Federal Government; *Number of Respondents:* 21,000; *Total Annual Responses:* 10,500; *Total Annual Hours:* 5,248.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Rehabilitation Unit Criteria Worksheet and Rehabilitation Hospital Criteria Worksheet; *Use:* The rehabilitation hospital and rehabilitation unit criteria worksheets are necessary to verify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective

payment system. *Form Number:* CMS–437A and 437B (OMB# 0938–0986); *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1227; *Total Annual Responses:* 1227; *Total Annual Hours:* 307.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by December 30, 2008:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 23, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–25925 Filed 10–30–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Feasibility Test for Design Phase of National Study of Child Care Supply and Demand.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to collect information as part of the Design Phase of the National Study of Child Care Supply and Demand. This effort will gather information that will be useful for evaluating the feasibility and improving the design of a national study of child care supply and demand. The proposed collection will consist of telephone calls and in-person interviews with various types of caregivers, including parents, home-based child care providers, center-based child care providers and before- and after-school programs. These data collection efforts will be used to examine the functioning of draft survey instruments. The feasibility test procedures will help inform several decisions about proposed design of the national study, including sampling methods, costs and advantages associated with alternative interviewing protocols and reactions to the proposed methods.

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

Annual Burden Estimates

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Eligibility calls to Before/After School Programs	150	1	2	30
Household screening calls	1,000	1	15	150
Telephone calls with households with children under age 13	160	1	5	80
Telephone calls with providers of home-based care from administrative lists	40	1	3	12
Telephone calls with center-based providers of before/after school care	20	1	5	10
Telephone calls with home-based child care providers identified through household surveys	64	1	3	19
Center-based providers from administrative lists	48	1	5	24
In-person interviews with parents of children in non-parental care	50	1	4	20
In-person interviews with child-care provider staff	50	1	4	20
Estimated Total Annual Burden Hours	.....	.....	.....	365

Additional Information: In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfoco1lection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 24, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8–25955 Filed 10–30–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.

OMB No.: 0970–0230.

Description: This revises the notice that appeared in the **Federal Register** on October 6, 2008 (Volume 73, Number 194). It clarifies the fact that there is no longer a High Performance Bonus associated with this information collection. The Deficit Reduction Act of 2005 (Pub. L. 109–171) eliminated the funding for the High Performance Bonus (HPB), but we are still requesting that States continue to submit data necessary to calculate the work measures previously reported under the HPB.

Specifically, the TANF program was reauthorized under the Deficit Reduction Act of 2005. The statute eliminated the funding for the HPB under section 403(a)(4). Nevertheless the Department is required under section 413(d) to annually rank State performance in moving TANF recipients into private sector employment. We are, therefore, requesting that States continue to transmit monthly files of adult TANF recipients necessary to calculate the work measures performance data. To the extent States do not provide the requested information, we will extract the matching information from the TANF Data Report. This may result in calculation of the work performance measures based on sample data, which would provide us less precise information on States' performance.

The Transmission File Layouts form provides the format that States will continue to use for the quarterly electronic transmission of monthly data on TANF adult recipients. States that have separate TANF–MOE files on these programs are also requested to transmit similar files. We are not requesting any changes to the Transmission File Layouts form.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts	54	2	16	1,728
Estimated Total Annual Burden Hours				1,728

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families (ACF) is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 27, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–26004 Filed 10–30–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0169]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Infant Formula Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 2008 (73 FR 35699), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0188. The approval expires on August 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–26010 Filed 10–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: November 18, 2008, 9 a.m. to 5 p.m. EST.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Tuesday, November 18, from 9 a.m. to 5 p.m. (EST). The public can join the meeting via audio conference call by dialing 1–888–324–9432 on November 18 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the November meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics Evaluation and Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Michelle Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *mherzog@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Michelle Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *mherzog@hrsa.gov*.

Dated: October 17, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–25992 Filed 10–30–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Behavioral Health Preventive Care Assessment Focus Group Guide

Note: The purpose of this second announcement is to provide another opportunity for public comment. The previous **Federal Register** notice was published on August 19, 2008, FR Doc. E8–19050.

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (73 FR 23254) on April 29, 2008 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–NEW, ''Behavioral Health Preventative Care Assessment Focus Group.'' *Type of Information Collection Request:* Three year approval for this new information collection, 091 7–NEW, ''Behavioral Health Preventive Care Assessment Focus Group Guide.'' *Form Number(s):* None. *Need and Use of Information Collection*: The IHS goal is to raise the health status of the American Indian and Alaska Native people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, IHS uses the Government Performance Act (GPRA) to assess quality of care among its Federal, urban, and Tribal health programs. The IHS has been largely successful in meeting GPRA targets for selected clinical performance measures at the national level. However, there is significant variability in performance among IHS and Tribal service units.

Until this time, IHS has not undertaken any comprehensive studies to evaluate the reasons for that variability or the factors that contribute to high quality care at the local level. The IHS has three GPRA measures relating to behavioral health, a high priority for the Agency and one of the IHS Director's Initiatives. This study will focus on these three GPRA behavioral health measures: Depression Screening in adults age 18 and over, Domestic/Intimate Partner Violence screening in women ages 15–40 and Alcohol Screening (to prevent Fetal Alcohol Syndrome) in women ages 15–44.

Tribal programs voluntarily report their GPRA results quarterly and annually for national reporting. GPRA data collected for these three behavioral health measures includes: The number of patients eligible for a screening (denominator), number of eligible patients who receive a screening (numerator), and the resulting screening rate (percentage). IHS has developed a methodology to identify superior and poor performers on these measures in both Tribal and Federal sites using fiscal year 2005, 2006, and 2007 GPRA performance results.

IHS will convene focus groups with employees at 17 of these programs (7 IHS and 10 Tribal) in order to identify the factors contributing to (and when appropriate, the barriers preventing) the provision of high quality behavioral health care at the local level. These focus groups will allow employees to provide detailed data regarding program practices, screening and documentation procedures, initiatives, resources, and other factors relating to the provision of behavioral health preventive care at their health program. A total of two to three focus groups, organized by occupational specialty, will be convened at each program.

Using the Chronic Care Model and Institute of Medicine recommendations, IHS will analyze the information collected during these site visits, along with background information that is publicly available (e.g., information found on clinic Web pages) on other qualitative and quantitative features of individual programs, such as staffing and funding levels, community demographics, and organizational structure, to develop a behavioral health preventive care model relevant to the unique system of IHS delivery. Affected Public: Individuals. Type of Respondents: Tribal employees at Tribal health programs.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Number of total annual responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response*	Annual burden hours
Administrators/Supervisor Focus Group Guide	30	1	30	2	60
Provider Focus Group Guide	30	1	30	2	60
Behavioral Health Provider Focus Group Guide	15	1	15	2	30
Data Entry Focus Group Guide	15	1	15	2	30
Total	90	.....	.....	.....	180

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, *Attention:* Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s) contact: Ms. Janet Ingersoll, Freedom of Information Act Coordinator, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601; call non-toll free (301) 443–1116; send via facsimile to (301) 443–2316; or send your e-mail requests, comments, and return address to: *Janet.Ingersoll@ihs.gov.*

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

Dated: October 22, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–25795 Filed 10–30–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; IP HIV Vaccines.

Date: November 24, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Ellen S. Buczko, PhD., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25959 Filed 10–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

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

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

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cardiovascular Ancillary Studies in Kidney Disease.

Date: November 20, 2008.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; STOPP–T2D Limited Competition.

Date: November 21, 2008.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Genetics of Inherited Disease.

Date: December 2, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, PhD., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25960 Filed 10–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Scientific and Logistics Support for the Center for the Evaluation of Risks to Human Reproduction.

Date: November 18, 2008.

Time: 9:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25961 Filed 10–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0113]

Privacy Act of 1974; United States Coast Guard Courts Martial Case Files System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, and as part of the Department of Homeland Security ongoing effort to review and update legacy system of record notices the Department of Homeland Security is giving notice that it proposes to consolidate two legacy record systems: DOT/CG 507 Coast Guard Supplement to the Manual of Courts Martial Investigations and DOT/CG 510 Records of Trial: Special, General and Summary Courts Martial into a Department of Homeland Security system of records notice titled, United States Coast Guard Courts Martial Case Files. This system will be used by the United States Coast Guard to collect and maintain records on military and civilian employees of the United States Coast Guard who are tried by, or involved with, court martial in the United States Coast Guard. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department of Homeland Security/United States Coast Guard's courts martial record systems. Concurrent with this publication, the Department of Homeland Security is publishing a notice of proposed rulemaking to exempt this system from certain aspects of the Privacy Act. This system will be included in the Department's inventory of record systems.

DATES: Submit comments on or before December 1, 2008. This new system will be effective December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0113 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: David Roberts (202–475–3521), Privacy Officer, United States Coast Guard. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/United States Coast Guard (USCG) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records pertaining to courts martial case files regarding the USCG military personnel.

As part of its efforts to streamline and consolidate its record systems, DHS is establishing a component system of records under the Privacy Act (5 U.S.C. 552a) for USCG that deals with courts martial case files. This record system is titled, United States Coast Guard Courts Martial Case Files, and is a compilation of two USCG legacy SORNs: DOT/CG 507 Coast Guard Supplement to the Manual of Courts Martial Investigations (65 FR 19476 April 11, 2000) and DOT/CG 510 Records of Trial: Special, General and Summary Courts Martial (65 FR 19476 April 11, 2000). This records system will allow DHS/USCG to collect and maintain records regarding military justice administration and documentation of DHS/USCG court martial.

In accordance with the Privacy Act of 1974, DHS is giving notice that it proposes to consolidate two legacy record systems: DOT/CG 507 Coast Guard Supplement to the Manual of Courts Martial Investigations (65 FR 19476 April 11, 2000) and DOT/CG 510 Records of Trial: Special, General and Summary Courts Martial (65 FR 19476 April 11, 2000) into a DHS system of records notice titled, United States Coast Guard Courts Martial Case Files. This system will be used by DHS/USCG to collect and maintain records on USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, court martial in the USCG. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the DHS/USCG's courts martial record systems. Concurrent with this publication, the Department of Homeland Security is publishing a notice of proposed rulemaking to exempt this system from certain aspects of the Privacy Act. This system will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the United States Coast Guard Courts Martial Files System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS:

DHS/USCG–008.

SYSTEM NAME:

United States Coast Guard Courts Martial Case Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC, and in field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include all USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, court martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social Security number;
- Employee identification number;
- Date of birth;
- Addresses;
- E-mail address;
- Telephone numbers;
- Job-related information including: Job title, rank, duty station, supervisor's name and telephone number; and
- Records of trial (contents are in accordance with Article 54 of the Uniform Code of Military Justice and Rule for Court Martial 1103 which includes charge sheet, exhibits, transcript of trial, sentencing report, arguments, and various other documents).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; 14 U.S.C. 93(e), 632; 10 U.S.C. 815; 10 U.S.C. 865; E.O. 11835; DHS Delegation 0170.1.

PURPOSE(S):

The purpose of this system is to document courts martial case files relating to the all USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, court martial.

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

Courts martial records reflect criminal proceedings ordinarily open to the public; therefore, they are normally releasable to the public pursuant to the Freedom of Information Act. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To provide statistical data concerning the number of proceedings held, units holding proceedings, offenses committed, punishments imposed, and background data of individuals concerned.

J. To the Veterans Administration (VA) to assist USCG in determining the individual's entitlement to benefits administered by the VA.

K. To the confinement facility, if confinement is adjudged, and the confinement facility is not USCG facility.

L. To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense pursuant to USCG Military Justice Manual, Article 4.B.1.d and subject to any restrictions provided by the Victim and Witness Protection Act of 1982 (Pub. L. 97–291).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records can be stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records will be retrieved alphabetically by the name of the individual.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

All General Courts Martial and Special Courts Martial records involving Bad Conduct Discharge are permanent. Transfer to FRC 2 years after date of final action. Transfer to NARA 10 years after final action. (AUTH: NC1–26–76–2, Item 384a). Special Courts Martial other than those involving Bad Conduct Discharges are temporary. Transfer to FRC 2 years after date of final action. Destroy 10 years after date of final action. (AUTH: NC1–26–76–2, Item 384b). Summary Courts Martial convened after 5 May 1950 are Temporary. Transfer to FRC 2 years after date of final action. Destroy 10 years after date of final action. (AUTH: NC1–26–76–2, Item 384c(1)). (Records Officer)

SYSTEM MANAGER AND ADDRESS:

Commandant, CG–0946, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to Commandant, CG–0946, Office of Military Justice, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28

U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

• An explanation of why you believe the Department would have information on you,

• Specify when you believe the records would have been created,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

USCG investigating officers, military, and civilian personnel. Individual service records from proceedings conducted. Trial proceedings and subsequent statutory reviews—Court of Military Review, Court of Appeals for the Armed Services, and Chief Counsel of the USCG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

Dated: October 22, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25964 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0137]

Privacy Act of 1974; United States Coast Guard Employee Assistance Program Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of records notices, the Department of Homeland Security is giving notice that it proposes to update and reissue DOT/CG 636 Personal Affairs Record System Coast Guard Military Personnel. This system will allow the United States Coast Guard to administer the United States Coast Guard Employee Assistance Program for military personnel. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice has been updated to better reflect the United States Coast Guard's Employee Assistance Program record systems. This new system titled United States Coast Guard Employee Assistance Program, will be included in the Department's inventory of record systems.

DATES: Written comments must be submitted on or before December 1, 2008. This new system will be effective December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0137 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Fax:* 1–866–466–5370.

• *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: David Roberts (202–475–3521), United States Coast Guard Privacy Officer, United States Coast Guard. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/United States Coast Guard (USCG) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern the USCG Employee Assistance Program.

As part of its efforts to streamline and consolidate its record systems, DHS/USCG is establishing a DHS/USCG system of records under the Privacy Act (5 U.S.C. 552a) for the USCG. The system will consist of records regarding the issue(s) giving rise to counseling, action taken by USCG Employee Assistance Program, and general information regarding the individual seeking counseling.

In accordance with the Privacy Act of 1974, and as part of the DHS's ongoing effort to review and update legacy system of records notices, the DHS is updating and reissuing DOT/CG 636 Personal Affairs Record System Coast Guard Military Personnel (65 FR 19476 4/11/2000). This system will allow USCG to administer the USCG Employee Assistance Program for military personnel. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the USCG's Employee Assistance Program record systems. This new system, titled United States Coast Guard Employee Assistance Program, will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is stored and retrieved by the name of the individual or by some identifying number such as property address, or mailing address symbol, assigned to the individual. In

the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. DHS extends administrative Privacy Act protections to all individuals where information is maintained on both U.S. citizens, lawful permanent residents, and visitors. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. Below is the description of the USCG Employee Assistance Program system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS/USCG–002.

SYSTEM NAME:

United States Coast Guard Employee Assistance Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Employee Assistance Program case records are maintained by the USCG's vendor for the Employee Assistance Program. USCG Headquarters (CG–1112) is the point of contact for access to these records. Reports of USCG active duty suicidal behavior, work place violence incidents, critical incidents, and sexual assault reports are maintained at USCG Headquarters by the Office of Work-Life (CG–1112). Reports of sexual assaults received by USCG Headquarters (CG–1112) do not contain personally identifiable information. All other USCG records under this system are located at Work-Life Offices in Washington, DC and field locations. USCG Headquarters (CG–1112) is the point of contact for access to these records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USCG active duty, reserve, and retired active duty and reserve military personnel and their eligible dependants/individuals who have been referred for assistance or counseling, are being assisted or counseled, or have been assisted or counseled by the USCG Employee Assistance Program. Eligibility will vary based on status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Military personnel's name;
- Eligible dependent/individual's name, if applicable;
- Social Security number;
- Employee identification number;
- Date of birth;
- Addresses;
- E-mail address;
- Telephone numbers;
- Job-related information including: Job title, rank, duty station, supervisor's name and telephone number, documents received from supervisors or personnel regarding workplace problems or performance, leave and attendance records, and workplace-related recommendations made to supervisors as a result of a team meeting;
- Counseling and intervention-related information including: Notes and documentation of Employee Assistance Program counselors; records of treatment, including non-clinical educational interventions; counseling referrals; team reports; records of employee attendance at treatment and counseling programs; prognosis of individuals in treatment or counseling programs; insurance data; addresses and contact information of treatment facilities; name and address of individuals providing treatment or counseling or intervention; and Privacy Act notification forms and written consent forms;
- USCG Workplace Violence and related Critical Incident Team records of the Workplace Violence Prevention Program, maintained by USCG Work-Life personnel. These records may include written reports and recommendations to leadership personnel regarding alleged workplace violence incidents;
- USCG Critical Incident Stress Management-related records which may include descriptions of incidents, consultations, interventions, and may contain personally-identifying information (for the purpose of follow-on contacts with those thought to be impacted by the critical incident);
- USCG Sexual Assault Prevention and Response Program case records maintained by USCG Work-Life personnel. These records are used to facilitate services for victims and their family members as appropriate. In addition to information cited above these records may contain Victim Reporting Preference Statement, case notes and safety plan. Record may also contain descriptions of alleged assaults;
- USCG Victim Support Person or Victim Advocate maintained by USCG Work-Life personnel. These are maintained in conjunction with efforts to provide assistance to victims of crime. Record will contain signed Victim Support Person or Victim Advocate Statement of Understanding and Victim Support Person or Victim Advocate Supervisor Statement of Understanding, assignment information, and notes regarding results of screening interview, relevant training received, and any other information relevant to the Victim Support Person's or Victim Advocate's provision of support services to victims;
- USCG Critical Incident Stress Management Peer Volunteers maintained by USCG Work-Life personnel. These records contain statement of understanding, notes regarding screening interview, record of related training received and any other information relevant to the peer's provision of services when deployed after a critical incident;
- Case records maintained by USCG Work-Life personnel on USCG Active Duty members who have demonstrated suicidal behavior. The purpose of these records is to facilitate continuity of care for personnel who have exhibited suicidal behavior. These records will contain reports regarding each incident and follow-up case notes;
- Reports of USCG active duty suicidal behavior incidents, workplace violence incidents, critical incidents, and sexual assaults are maintained by USCG Headquarters (CG–1112). These reports are received from Work-Life Offices who are responsible for providing services for the related programs described above. Their purpose is to ensure continuity of care and to identify any systemic issues found in aggregate data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296, 6 U.S.C. 121; Federal Records Act, 44 U.S.C. 3101; 6 CFR Part 5; 5 U.S.C. app. 3; 5 U.S.C. 301 and Ch. 41; Executive Order 11348, as amended by Executive Order 12107; and Executive Order 9397. 5 U.S.C. 7361, 7362, 7901, 7904.

PURPOSE(S):

The Employee Assistance Program will maintain information gathered by and in the possession of USCG Employee Assistance Program, an internal agency program designed to

assist employees of USCG and, in certain instances, their eligible dependants/individuals, in regard to a variety of personal and/or work-related problems. The program involves counseling, educational, and consultative services provided through the internal and external Employee Assistance Program for alcohol, drug, emotional, or behavioral problems, and addresses mandatory and voluntary counseling following exposure to a traumatic incident, responses to critical incidents that impact employees, and workplace incidents involving actual violence or the threat of violence and necessary follow-up.

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

Disclosure of substance abuse records is limited to the parameters set forth in 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e). Accordingly, a Federal employee's substance abuse records may not be disclosed without the prior written consent of the employee, unless the disclosure would be one of the following:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) or harm to the individual who relies upon the compromised information;

3. The disclosure made to such agencies, entities, and persons is 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.

C. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

D. To appropriate State and local authorities to report, under State law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12.

E. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

F. To report to appropriate authorities when an individual is potentially at risk to harm himself or herself or others.

G. To medical personnel to the extent necessary to meet a bona fide medical emergency.

H. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified.

I. To the employee's medical review official.

J. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating.

K. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

L. Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action. See 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Data may be retrieved by a Military personnel's, eligible dependant's/individual's name. USCG Critical Incident Stress Management-related records are filed by unit name and are not be retrievable by individual name, rather, by unit name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are maintained and disposed in accordance with National Archives and Records Administration approved agency Records Schedule, No. (AUTH: N1–026–07–1, Item 1). With the exception of Employee Assistance Program client records containing Department of Transportation-required Substance Abuse evaluations, and USCG Sexual Abuse Prevention and Response Program client records, records are retained for three years after the client has ceased contact, or for five years after last disclosure of information from the record.

Employee Assistance Program client records containing Department of Transportation-required Substance Abuse evaluations and USCG Sexual Abuse Prevention and Response Program client records are retained until five years after the client has ceased contact or, if later, for five years after last disclosure of information from the record.

All records will be retained beyond their normal maintenance period until any pending litigation is completed. This will be true whether or not the client has terminated employment with DHS/USCG. Individual states may require longer retention. The rules in this system notice should not be

construed to authorize any violation of such state laws that have greater restrictions.

Files will be destroyed only after the required period of maintenance, with a witness present, by either (1) a DHS or USCG Employee Assistance Program Administrator or an Employee Assistance Program Administrator from another organization that contracts with DHS or USCG for Employee Assistance Program services, or (2) by designated staff of a private or governmental organization under contract with DHS or USCG to provide document destruction services. The witness must be trained in the proper handling of records covered by the Privacy Act and 42 CFR Part 2.

Written records will be destroyed by shredding or burning. Records stored on hard drives will be destroyed using software tools which ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable. Records contained on back-up tapes/diskettes will be disposed by either physically destroying the tapes/diskettes or by deleting them using software tools which ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable.

Records located away from the destruction site shall be transferred to the destruction site in the confidential manner. The name and case coding number of the destroyed record will be maintained on a list of other destroyed records. No other information about Employee Assistance Program clients may be maintained once these files have been destroyed.

SYSTEM MANAGER AND ADDRESS:

Commandant, CG–1112, Office of Work-Life, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to Commandant, CG–1112, Office of Work-Life, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information in this system is supplied from the following sources:

- USCG Employee Assistance Program: The client, the licensed mental health provider, and collateral sources and resources intended to help the client.
- USCG Workplace Violence and related Critical Incident Team: Investigation records, personnel records, critical incident team assembled to make recommendations to command, subject's supervisors, and the subject.
- USCG Critical Incident Stress Management-related records: Work-Life staff, Peers, Incident commander, command(s) affected, individuals impacted by incident, other support persons who may be mobilized to assist those impacted by the event.
- USCG Sexual Assault Prevention and Response Program: Victim, victim support person, medical personnel assisting victim, criminal investigations and investigators, and other support personnel intended to assist victim.
- USCG Victim Support Persons (VSP): The victim support person, Work-Life staff, VSP's or Victim Advocate's work supervisor, other support persons who may assist in training.
- USCG Critical Incident Stress Management Peer Volunteers: Peer, Peer's supervisor, Work-Life staff, and other support persons who may assist in training.
- Case records maintained by USCG Work-Life personnel on USCG Duty members who have demonstrated suicidal behavior: The patient, medical personnel, patient's command, and Work-Life staff and other support persons who may assist in helping the patient.
- Reports of USCG active duty suicidal behavior incidents, workplace violence incidents, critical incidents, and sexual assaults maintained by USCG Headquarters (CG–1112): Work-Life staff and others as described above under their related programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 22, 2008.

Hugo Teufel III

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25967 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0106]

Privacy Act of 1974; U.S. Immigration and Customs Enforcement Trade Transparency Analysis and Research (TTAR) System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new system of records titled U.S. Immigration and Customs Enforcement (ICE) Trade Transparency Analysis and Research (TTAR). TTAR contains trade and financial data that is analyzed to generate leads for and otherwise support ICE investigations of trade-based money laundering, contraband smuggling, trade fraud and other financial crimes. The data in TTAR is generally maintained in the ICE Data Analysis and Research Trade Transparency System (DARTTS), a software application and data repository that conducts analysis of trade and financial data to identify statistically anomalous transactions that may warrant investigation for money laundering or other import-export crimes. Additionally, a Privacy Impact Assessment for DARTTS will be posted on the Department's privacy Web site.

(See *http://www.dhs.gov/privacy* and follow the link to ''Privacy Impact Assessments.'') Due to urgent homeland security and law enforcement mission needs, DARTTS is currently in operation. Recognizing that ICE is publishing a notice of system of records for an existing system, ICE will carefully consider public comments, apply appropriate revisions, and republish the TTAR notice of system of records within 180 days of receipt of comments. A proposed rulemaking is also published in this issue of the **Federal Register** in which the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: The established system of records will be effective December 1, 2008. Written comments must be submitted on or before December 1, 2008. A revised TTAR notice of system of records that addresses public comments, responds to OMB direction, and includes other ICE changes will be published not later than May 29, 2009 and will supersede this notice of system of records.

ADDRESSES: You may submit comments, identified by DHS–2008–0106 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lyn M. Rahilly (202–514–1900), Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington DC 20001, or Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Transparency Analysis and Research (TTAR) system of records is owned by the ICE Office of Investigations Trade Transparency Unit (TTU) and is maintained for the purpose of enforcing criminal laws pertaining to trade through trade transparency. Trade transparency is the concept of examining U.S. and foreign trade data to identify anomalies in patterns of trade. Such anomalies can indicate trade-based money laundering or other import-export crimes that ICE is responsible for investigating, such as contraband smuggling, trafficking of counterfeit goods, misclassification of goods, and the over- or under-valuation of goods to hide the proceeds of illegal activities. TTAR contains trade and financial data received from U.S. Customs and Border Protection (CBP), U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN), other federal agencies and foreign governments. TTAR data is primarily related to international commercial trade and contains little information on the normal day-to-day activities of individual consumers.

As part of the trade transparency investigative process, ICE investigators and analysts must understand the relationships between importers and exporters and the financing for a set of trade transactions to determine which transactions are suspicious and warrant investigation. If performed manually, this process often involves hours of analysis of voluminous data for a particular case or operation. To automate and expedite this process, the former U.S. Customs Service created the Data Analysis and Research Trade Transparency System (DARTTS), a software application and data repository that conducts analysis of trade and financial data to identify statistically anomalous transactions that may warrant investigation for money laundering or other import-export crimes. DARTTS is specifically designed to make this investigative process more efficient by automating the analysis and identification of anomalies for the investigator. While DARTTS does increase the efficiency of data analysis, DARTTS does not allow ICE agents and analysts to obtain any data they could not otherwise access in the course of their investigative activities.

DARTTS does not seek to predict future behavior or ''profile'' individuals, i.e., look for individuals who meet a certain pattern of behavior that has been pre-determined to be suspect. Instead, it analyzes and identifies trade and financial transactions that are statistically anomalous. Investigators gather additional facts, verify the accuracy of the DARTTS data, and use their judgment and experience to determine if the anomalous transactions are in fact suspicious and warrant further investigation. Not all anomalies lead to formal investigations. DARTTS can also identify links (relationships) between individuals or entities based on commonalities, such as identification numbers, addresses, or other information. These commonalities in and of themselves are not suspicious, but in the context of additional information they sometimes help investigators to identify potentially criminal activity and identify other suspicious transactions, witnesses, or suspects.

With the creation of the U.S. Department of Homeland Security (DHS) in 2003, the criminal investigative arm of the U.S. Customs Service, which included the TTU and the DARTTS system, was transferred to ICE. As part of DHS's ongoing effort to ensure legacy records transferred to DHS are maintained in compliance with the Privacy Act, ICE proposes to establish this new system of records to cover the data ICE maintains for trade transparency analysis, including the data maintained in DARTTS. A Privacy Impact Assessment (PIA) was conducted on DARTTS because it maintains personally identifiable information. The DARTTS PIA is available on the Department of Homeland Security (DHS) Privacy Office Web site at *http://www.dhs.gov/privacy.*

Individuals may request information about records pertaining to them stored in DARTTS as outlined in the ''Notification Procedure'' section below. ICE reserves the right to exempt various records from release pursuant to exemptions 5 U.S.C. 552a(j)(2) and (k)(2) of the Privacy Act.

Consistent with DHS's information sharing mission, information stored in the DARTTS may be shared with other DHS components, with foreign governments with whom DHS has entered into international information sharing agreements for trade data for the purpose of enforcing customs laws, and with appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government

collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the TTAR system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS/ICE–005.

SYSTEM NAME:

Trade Transparency Analysis and Research (TTAR).

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Records are maintained at the Immigration and Customs Enforcement Headquarters in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: a) Individuals who, as importers, exporters, shippers, transporters, brokers, owners, purchasers, consignees, or agents thereof, participate in the import or export of goods to or from the U.S. or to or from nations with which the U.S. has entered an agreement to share trade information; and b) individuals who participate in financial transactions that are reported to the U.S. Treasury Department under the Bank Secrecy Act or other U.S. financial crimes laws and regulations (*e.g.*, individuals who participate in cash transactions exceeding $10,000; individuals who participate in a reportable suspicious financial transaction).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Names;
- Addresses (home or business);
- Trade identifier numbers (*e.g.*, Importer ID, Exporter ID, Manufacturer ID);
- Social Security/tax identification numbers;
- Passport numbers;
- Account numbers (*e.g.*, bank account);
- Description and/or value of trade goods;
- Country of origin/export; and
- Description and/or value of financial transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 545 (Smuggling goods into the United States); 18 U.S.C. 1956 (Laundering of Monetary Instruments); and 19 U.S.C 1484 (Entry of Merchandise).

PURPOSE(S):

The purpose of this system is to enforce criminal laws pertaining to trade, financial crimes, smuggling, and fraud, specifically through the analysis of raw financial and trade data in order to identify potential violations of U.S. criminal laws pertaining to trade, financial crimes, smuggling, and fraud and to support existing criminal law enforcement investigations into related criminal activities.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when (1) DHS or any component thereof; (2) any employee of DHS in his/her official capacity; (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation; and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information, or harm to an individual; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or

implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

I. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

K. To a Federal, State, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

L. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

M. To international and foreign governmental authorities in accordance with law and formal or informal international agreements.

N. To Federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

O. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations where DHS is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by any of the personal identifiers stored in the system including name, business address, home address, importer ID, exporter ID, broker ID, manufacturer ID, social security number, trade and tax identifying numbers, passport number, or account number. Records may also be retrieved by non-personal information such as transaction date, entity/institution name, description of goods, value of transactions, and other information.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access the system. Additional safeguards may vary by component and program.

RETENTION AND DISPOSAL:

ICE is in the process of drafting a proposed record retention schedule for the information maintained in DARTTS. ICE anticipates retaining the records in DARTTS for five years and then archiving records for five additional years, for a total retention period of ten years. The five-year retention period for records is necessary to create a data set large enough to effectively analyze anomalies and patterns of behavior in trade transactions. Records older than five years will be archived for five additional years and will only be used to provide a historical basis for anomalies in current trade activity. The original CD-ROMs containing the raw data will be retained for five years for the purpose of data integrity and system maintenance.

SYSTEM MANAGER AND ADDRESS:

Unit Chief, Trade Transparency Unit, ICE Office of Investigations, 425 I Street, NW., Washington DC 20536.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose form the Director, Disclosure and FOIA,

http://www.dhs.gov or 1–866–431–0486. In addition you should provide the following:

• An explanation of why you believe the Department would have information on you,

• Identify which component(s) of the Department you believe may have the information about you,

• Specify when you believe the records would have been created,

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

(1) U.S. Customs and Border Protection (CBP) import data collecting using CBP Form 7501, ''Entry Summary.''

(2) U.S. Department of Commerce export data collected using Commerce Department Form 7525–V, ''Shipper's Export Declaration.''

(3) U.S. Exports of Merchandise Dataset (a publicly available aggregated U.S. export dataset purchased from the U.S. Department of Commerce).

(4) Foreign import and export data provided by partner countries pursuant to a Customs Mutual Assistance Agreement (CMAA) or other similar agreement.

(5) Financial Transaction Reports from Treasury Department's Financial Crimes Enforcement Network (FinCEN), specifically: (a) Currency Monetary Instrument Reports (CMIRs)—Declarations of currency or monetary instruments in excess of $10,000 made by persons coming into or leaving the United States; (b) Currency Transaction Reports (CTRs)—Deposits or withdrawals of $10,000 or more in currency into or from depository institutions; (c) Suspicious Activity Reports (SARs)—Information regarding suspicious financial transactions within depository institutions, casinos, and the securities and futures industry; and (d) Report of Cash Payments over $10,000 Received in a Trade or Business—Report of merchandise purchased with $10,000 or more in currency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

Dated: October 24, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25968 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0018]

Privacy Act of 1974; Department of Homeland Security Employee Assistance Program Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of record notices, the Department of Homeland Security proposes to update and reissue one legacy record system: Justice/INS–019 INS Employment Assistance Program Treatment Referral Records. This system will allow the Department of Homeland Security to collect and maintain records on the Department's Employee Assistance Program. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice has been reviewed and updated to better reflect the Department's Employee Assistance Program record systems. This reclassified system, titled Employee Assistance Program Records, will be included in the Department's inventory of record systems.

DATES: Submit comments on or before *December 1, 2008.* This new system will be effective December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0018 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Fax:* 1–866–466–5370.

• *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

• *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern the information relating to DHS's Employee Assistance Program (EAP).

As part of its efforts to streamline and consolidate its Privacy Act records systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS EAP records. The system will consist of records regarding individuals who have sought or been referred to counseling services provided through the EAP. These records may include identifying information, information about the presenting issue (e.g. relationships, behaviors, emotions, legal or financial issues, illegal drug use, alcohol abuse, or the experience of a traumatic event), and the actions taken by EAP.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of record notices, DHS proposes to update and reissue one legacy record system: Justice/INS–019 INS Employment Assistance Program Treatment Referral Records (63 FR 3349 January 22, 1998). This system will allow DHS to collect and maintain records on DHS's

Employee Assistance Program. Categories of individuals, categories of records, and the routine uses of this legacy system of records notices has been reviewed and updated to better reflect DHS's EAP record systems. This reclassified system, titled Employee Assistance Program Records, will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the DHS EAP System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

SYSTEM OF RECORDS:

DHS/ALL–015.

SYSTEM NAME:

Department of Homeland Security Employee Assistance Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations, in component offices of DHS, in both Washington, DC and field locations, and by contractor locations on behalf of DHS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of DHS and members of the families of current and former employees of DHS who have been referred for assistance or counseling, are being assisted or counseled, or have been assisted or counseled by DHS EAP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Identifying information regarding the person who has sought or been referred for counseling, including:
  - Name, social security number, home address, duty station, unit name and phone numbers.
  - Date of birth.
  - Job title and grade.
  - Supervisor's name, address, and telephone number (if appropriate).
- Clinical information as appropriate, including:
  - Privacy Act and written consent forms.
  - A psychosocial history and assessment.
  - Medical records.
  - Correspondence with the client.
  - Clinical and education interventions.
  - Sessions held.
  - Employee records of attendance at treatment, kinds of treatment, and counseling programs.
  - Name, address and phone number of individuals providing treatment.
  - Name, address and phone number of treatment facilities.
  - Notes and documentation of internal EAP counselors.
  - Referrals to other providers, include name(s), addresses, and contact information.
  - Insurance data.
  - Prognosis of treatment information.
  - Intervention outcomes.
- Work-related information, especially if the client has been referred by management, including:
  - Leave and attendance records.
  - Performance records.
  - Documentation of alleged inappropriate behavior including records of workplace violence.
  - Documentation of the reason for referral.
  - Documentation of management interventions.
  - Workplace-related recommendations made to supervisors as a result of a team meeting.
- Records of illegal drug or alcohol use if the employee has been referred for those reasons, including:
  - Verified positive test results for use of illegal drugs.
  - Verified positive test results for alcohol consumption on the job above limits as outlined in Department policy.
  - Substance abuse assessment, treatment, aftercare, and monitoring records.
- Sexual Assault Prevention and Response Program case records. These records are used to facilitate services for victims and their family members as appropriate. In addition to information cited above these records may contain Victim Reporting Preference Statement, case notes, and safety plan. Records may also contain descriptions of alleged assaults.
- Victim Support Person or Victim Advocate records. These records are maintained in conjunction with efforts to provide assistance to victims of crime. Records contain signed Victim Support Person or Victim Advocate Statement of Understanding and Victim Support Person or Victim Advocate Supervisor Statement of Understanding, assignment information, and notes regarding results of screening interview, relevant training received, and any other information relevant to the Victim Support Person's or Victim Advocate's provision of support services to victims.
- Critical Incident Stress Management Peer Volunteers records. These records contain statement of understanding, notes regarding screening interview, record of related training received and any other information relevant to the peer's provision of services when deployed after a critical incident.

If the EAP participant is a family member of a DHS employee, the same information may be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; The Homeland Security Act of 2002; Public Law 107–296; 5 U.S.C. 7361, 7362, 7901, 7904; 42 U.S.C. 290dd–2; Executive Order 9373; and Executive Order 12564.

PURPOSE(S):

This record system will maintain information gathered by and in the possession of the DHS EAP, an internal agency program designed to assist employees of DHS and, in certain instances, their families, in regard to a variety of personal and/or work-related issues.

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

Disclosure of substance abuse records is limited to the parameters set forth in 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e). Accordingly, a Federal employee's substance abuse records may not be disclosed without the prior written consent of the employee, unless the disclosure would be one of the following:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

C. To contractors and their agents, grantees, experts, consultants, and others (e.g. providers contracted to provide EAP services to DHS employees) performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

D. To appropriate State and local authorities to report, under State law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12.

E. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

F. To report to appropriate authorities when an individual is potentially at risk to harm himself or herself or others.

G. To medical personnel to the extent necessary to meet a bona fide medical emergency.

H. To medical personnel to the extent necessary to meet a bona fide medical emergency;

I. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified;

J. To the employee's medical review official;

K. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

L. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

M. Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action. See 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Data may be retrieved by an individual's name, social security number, date of birth, unit name, and/or other personal identifier related to their specific EAP case.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

All records with the exception of the Sexual Abuse Prevention and Response Program records are destroyed three years after termination of counseling for each distinct presenting issue or after the conclusion of litigation, in accordance with National Archives and Records Administration General Records Schedule 1, Item 26.

Sexual Abuse Prevention and Response Program records are retained until five years after the client has ceased contact or, if later, for five years after last disclosure of information from the record.

All records are retained beyond their normal maintenance period until any pending litigation is completed. This will be true whether or not the client has terminated employment with DHS. Individual States may require longer retention. The rules in this system notice should not be construed to authorize any violation of such state laws that have greater restrictions.

SYSTEM MANAGER AND ADDRESS:

For Headquarters of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of

perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

• An explanation of why you believe the Department would have information on you,

• Identify which component(s) of the Department you believe may have the information about you,

• Specify when you believe the records would have been created,

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information originates from personnel seeking assistance, DHS and its components and offices, counselors, treatment facilities, and in certain cases family members, friends, and coworkers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 22, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25969 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0085]

Privacy Act of 1974; Department of Homeland Security Drug Free Workplace System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security is issuing a system of records notice for the Department's Drug Free Workplace Records. This record system will allow the Department of Homeland Security to collect maintain information gathered by and in the possession of Department of Homeland Security Drug Free Workplace Program Officials, used in the course of their duties in verifying positive test results for illegal use of controlled substance, and possession, distribution, or trafficking of controlled substances. This new system will be included in the Department's inventory of record systems.

DATES: Submit comments on or before December 1, 2008. This new system will be effective December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0085 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 1–866–466–5370.

• *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

• *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), and as part of its efforts to streamline and consolidate its Privacy Act records systems, the Department of Homeland Security (DHS) is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS Drug Free Workplace records. The system will consist of DHS employee records on the illegal use of controlled substances, and evidence of possession, distribution, or trafficking of controlled substances.

In accordance with the Privacy Act of 1974, DHS is issuing a system of records notice for the Department's Drug Free Workplace Records. This record system will allow DHS to collect maintain information gathered by and in the possession of DHS Drug Free Workplace Program Officials, used in the course of their duties in verifying positive test results for illegal use of controlled substance, and possession, distribution, or trafficking of controlled substances. This new system will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the Drug Free Workplace System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to the Congress.

SYSTEM OF RECORDS:

DHS/ALL–022.

SYSTEM NAME:

Department of Homeland Security Drug Free Workplace Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Office of the Chief Human Capital Officer, at several Headquarters locations, in component offices of DHS, in both Washington, DC and field locations, and by contractor locations on behalf of DHS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of DHS and certain applicants for employment with DHS who are tested for or submit voluntarily or involuntarily to the illegal use, possession, distribution, or trafficking of controlled substances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social Security number;
- Date of birth;
- Addresses;
- Telephone numbers;
- E-mail addresses;
- Job title and grade;
- Supervisor's, senior management's and leadership's full name, addresses, phone numbers, and email addresses;
- Supervisor's, senior management's and leadership's notes and records regarding an employee's suspected and/or confirmed illegal use, possession, distribution, or trafficking of controlled substances;
- Records related to any criminal conviction for illegal drug use or evidence obtained from any arrest or criminal conviction;
- Correspondence related to the suspected and/or confirmed illegal use, possession, distribution, or trafficking of controlled substances of a current or former DHS employee, including electronic mail and other electronic documents;
- Verified positive and negative test results for illegal use of controlled substances;
- Evidence of possession, distribution, or trafficking of controlled substances;
- Lists of controlled substances verified as positive;
- Substance abuse assessment, aftercare, and substance use monitoring results;
- Employee records of attendance at treatment, types of treatment, and counseling programs related to illegal use, possession, distribution, or trafficking of controlled substances;
- Records of treatment and counseling referrals related to testing for illegal use, possession, distribution, or trafficking of controlled substances;
- Prognosis of treatment information related to testing for illegal use, possession, distribution, or trafficking of controlled substances;
- Individual's name, address, work/cell/home phone numbers, email addresses, and other basic identification data for insurance purposes;
- Name, address, telephone numbers, email addresses of treatment facilities;
- Name, address, telephone numbers, email addresses of individuals providing treatment; and
- Written consent forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Records Act; 44 U.S.C. 3101; The Homeland Security Act of 2002; Public Law 107–296; 42 U.S.C. 290dd–2; 5 U.S.C. 7301; 7361, 7362, 7901, 7904; Executive Order 9373; and Executive Order 12564.

PURPOSE(S):

This record system will maintain information gathered by and in the possession of DHS Drug Free Workplace Program Officials, used in the course of their duties in verifying positive test results for illegal use of controlled substance, as well as collecting and maintaining evidence of possession, distribution, or trafficking of controlled substances.

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

Disclosure of substance abuse records is limited to the parameters set forth in 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e). Accordingly, a federal employee's substance abuse records may not be disclosed without the prior written consent of the employee, unless the disclosure would be one of the following:

A. To medical personnel to the extent necessary to meet a bona fide medical emergency;

B. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified;

C. To the employee's medical review official;

D. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

E. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

F. Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action. See 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records, other than substance abuse records described above, or other information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:.

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

C. To appropriate State and local authorities to report, under State law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12.

D. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Data may be retrieved by an individual's name, date of birth, and social security number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permission.

RETENTION AND DISPOSAL:

Records are destroyed after three years, in accordance with National Archives and Records Administration General Records Schedule 1, Item 36.

SYSTEM MANAGER AND ADDRESS:

For Headquarters of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information originates from personnel who submit to drug and alcohol testing, DHS and its components and offices, and testing and treatment facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 22, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25971 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, DHS.

ACTION: Notice of Publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available eleven (11) Privacy Impact Assessments on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between April 1, 2008 and June 30, 2008.

DATES: The Privacy Impact Assessments will be available on the DHS Web site until December 30, 2008, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Mail Stop 0550, Washington, DC 20528, or e-mail: *pia@dhs.gov*.

SUPPLEMENTARY INFORMATION: April 1, 2008 and June 30, 2008, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published eleven (11) Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *http://www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' Below is a short summary of each of those systems, including the DHS component responsible for the system, the name of system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

System: Law Enforcement Information Data Base/Pathfinder.

Component: United States Coast Guard.

Date of approval: March 31, 2008.

The United States Coast Guard (USCG), a component of the Department of Homeland Security, established the Law Enforcement Information Data Base (LEIDB)/Pathfinder. LEIDB/Pathfinder archives text messages prepared by individuals engaged in Coast Guard law enforcement, counterterrorism, maritime security, maritime safety and other Coast Guard missions enabling intelligence analysis of field reporting. USCG conducted this PIA because the LEIDB/Pathfinder system collects and uses personally identifiable information (PII).

System: Maritime Awareness Global Network.

Component: United States Coast Guard.

Date of approval: April 11, 2008.

USCG developed the Maritime Awareness Global Network (MAGNET) system. MAGNET uses information relating to vessels and activities within

the maritime environment to accomplish the USCG's missions in the areas of Maritime Safety, Maritime Security, Maritime Mobility, National Defense, and Protection of Natural Resources. MAGNET is a new system that will replace the existing integrated intelligence sharing system known as the Joint Maritime Information Element Support System. This PIA was completed because MAGNET will process PII.

System: United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program In conjunction with the Notice of Proposed Rulemaking on the Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure.

Component: United States Visitor and Immigrant Status Indicator Technology.

Date of approval: April 22, 2008.

The US–VISIT Program has been implemented in phases with each phase adding additional capabilities, locations of implementation, or subject populations. US–VISIT published this PIA in conjunction with the Notice of Proposed Rulemaking on Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure. A revised PIA will be issued in conjunction with the Final Rule on Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure.

System: Group Violent Intent Modeling (GVIM) Program.

Component: Science and Technology.

Date of approval: April 25, 2008.

This PIA describes the research and development objectives of DHS Science and Technology (S&T) Directorate's Human Factors Division Group Violent Intent Modeling (GVIM) project. The goal of GVIM is to determine whether including social and behavioral theories and concepts from established research in a software tool that is used to analyze group behaviors and motivations will improve the ability of analysts to identify indicators that could predict group violence. The project will develop a social and behaviorally based framework of theories and concepts that includes modeling and simulation tools to improve the efficiency and accuracy of intelligence analysts examining the likelihood of a group choosing violence to achieve its goals. This PIA is necessary because PII will be collected as part of the research and development effort.

System: Web Time and Attendance System.

Component: Department Wide.

Date of approval: May 1, 2008.

The DHS Office of the Chief Human Capital Officer procured a commercial off the shelf application and customized it to meet DHS standard requirements. This system is designed to implement an enterprise system that can efficiently automate the timesheet collection process and provide robust reporting features and a labor distribution capability. This PIA was conducted because WebTA utilizes PII.

System: Einstein 2.

Component: National Protection and Programs Directorate.

Date of approval: May 19, 2008.

This PIA is for an updated version of the EINSTEIN System. EINSTEIN is a computer network intrusion detection system (IDS) used to help protect federal executive agency information technology enterprises. EINSTEIN 2 will incorporate network intrusion detection technology capable of alerting the United States Computer Emergency Readiness Team (US–CERT) to the presence of malicious or potentially harmful computer network activity in federal executive agencies' network traffic. This network intrusion detection technology uses a set of pre-defined signatures based upon known malicious network traffic. The signatures are based upon malicious computer code and are not based upon PII. Nor is the IDS programmed specifically to collect or locate PII. While the IDS will collect some PII that is directly related to malicious code being transmitted to the federal networks, its main focus is to identify the malicious code and protect federal networks, not to collect PII.

System: Tactical Information Sharing System Update.

Component: Transportation Security Administration.

Date of approval: June 1, 2008.

The Transportation Security Administration (TSA) operates the Transportation Information Sharing System (TISS). TISS receives, assesses, and distributes intelligence information related to transportation security to Federal Air Marshals and other Federal, State, and local law enforcement. This PIA is being updated to reflect more clearly that TISS applies to all transportation modes, not just aviation modes as might have been assumed because the system involves Federal Air Marshals.

System: Security Threat Assessment for Airport Badge and Credential Holders.

Component: Transportation Security Administration.

Date of approval: June 2, 2008.

TSA is updating the PIA for the Security Threat Assessment (STA) for Airport Badge and Credential Holders to reflect an expansion of the covered population to include certain holders of airport approved badges, and to reflect the use of US–VISIT's Automated Biometrics Identification System (IDENT) database as part of the STA process, including enrollment of fingerprints in that database for recurring checks. This PIA is an updated and amended version of the PIA originally published by TSA on June 15, 2004, and subsequently amended on August 19, 2005 and on December 20, 2006. The requirements addressed in the previous PIAs are still in effect, including the requirement to conduct name-based STAs on all individuals seeking or holding airport identification badges or credentials and the requirement to conduct fingerprint-based criminal history record checks along with name-based checks on individuals seeking access to the Security Identification Display Area (SIDA) or Sterile Area of an airport.

System: Electronic System for Travel Authorization.

Component: Customs and Border Protection.

Date of approval: June 3, 2008.

CBP issued an Interim Final Rule to create regulations governing the submission of Electronic System for Travel Authorization (ESTA) data, a new system of records notice, and an associated PIA. The ESTA regulations will govern the collection and use of PII in determining the eligibility to travel of persons seeking to enter the United States under the Visa Waiver Program (VWP) by air or sea. The regulations will require nationals of VWP countries seeking to enter the United States by air or sea carriers to submit PII to an electronic system, ESTA, prior to travel. ESTA will run the applicant's information against various databases to determine whether there is a law enforcement or security reason to deem that a prospective traveler is ineligible to travel to the United States under the VWP. The ESTA system will serve to modernize and strengthen the security of the VWP as mandated by the ''Implementing Recommendations of the 9/11 Commission Act of 2007'' (9/11 Act), by providing automated vetting of travelers from VWP countries.

System: Critical Infrastructure Change Detection (CICD).

Component: Science and Technology.

Date of approval: June 19, 2008.

The Critical Infrastructure Change Detection (CICD) program is a DHS S&T research program that is examining novel technical approaches to provide wide area surveillance and change detection capabilities to protect the Nation's critical infrastructure. S&T

proposes to test a high resolution, 360 degree field-of-view video system that will accommodate multiple simultaneous users and also have change detection and tracking capabilities. A PIA is being conducted because the system demonstration will be performed in a public area of New York City and will involve capturing images of persons and textual information in the public space.

System: Department of Homeland Security General Contact List.

Component: DHS Wide.

Date of approval: June 30, 2008.

Many Department of Homeland Security operations and projects collect a minimal amount of contact information in order to distribute information and perform various other administrative tasks. Department Headquarters conducted this privacy impact assessment because contact lists contain PII. The Department added the following systems to this PIA:

- Science and Technology Cyber Security Research and Development Center Web Site,
- U.S. Coast Guard Proceedings magazine online subscription request form,
- Federal Emergency Management Agency National Fire Academy Long-Term Evaluation,
- Federal Emergency Management Agency Port Security Grant Program,
- National Protection and Programs Directorate Telecommunications Service Priority (TSP) Web.

Dated: October 21, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–25962 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Walkers

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 certain walkers which may be offered to the United States Government under a government procurement contract. Based upon the facts presented, in the final determination CBP concluded that Hong Kong is the country of origin of the walkers for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 22, 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 December 1, 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 October 22, 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 certain walkers which may be offered to the United States Government under a government procurement contract. This final determination, in HQ H033839, was issued at the request of Drive Medical Design and Manufacturing 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 concluded that, based upon the facts presented, certain articles will be substantially transformed in Hong Kong. Therefore, CBP found that Hong Kong is the country of origin of the finished articles 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: October 22, 2008.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

Attachment

HQ H033839

October 22, 2008

MAR–2–05 OT:RR:CTF:VS H033839 GOB

Category: Marking. Beth C. Ring, Esq., Sandler, Travis & Rosenberg, P.A., 551 Fifth Avenue, New York, NY 10176.

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Walkers

Dear Ms. Ring: This is in response to your letter of July 18, 2008, requesting a final determination on behalf of Drive Medical Design and Manufacturing (''Drive Medical''), pursuant to subpart B of Part 177, Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21 *et seq.*). You made a supplemental submission on September 29, 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 certain walkers. We note that Drive Medical is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

Facts

You describe the pertinent facts as follows. Drive Medical will assemble the walkers at a facility in Hong Kong. You state that the two ''U'' frame side pieces will be manufactured in Hong Kong. All of the other parts will be manufactured in China. The parts consist of the following:

- two ''U'' frame side pieces
- two release pins
- two springs
- four brass pins
- four stainless steel wire springs
- four crossbars
- one ''H'' frame
- four silencer caps
- four rubber tips
- two composite plastic hand grips
- two plastic push buttons
- an assortment of steel screws and nuts

You describe the manufacturing process as follows:

- The side frame is fitted with a handle grip using high pressure air to seat the handle in the proper position, The handle grip is heated prior to this process for better malleability.
- The top cross brace is secured to the side frame using a stainless steel star nut applied with an air screwdriver with a predetermined torque setting. This process is carried out on both front and back of the side frame and on both the left and right side.
- The side frames are placed through the ends of the center ''H'' frame. During this process a silencer ring is placed on the bottom tubes of the ''H'' frame, and an internal spacer is wrapped on the inside of the top of the ''H'' frame to reduce ''wobble.''
- A rivet with plastic guide is now mounted under the ''H'' frame directly to the side frame on both sides. These rivets hold the ''H'' frame in place.
- The lower side ''U'' frame support is now riveted to the side frame, front and back, on both sides of the walker.
- Release pins are dropped into both sides of the ''H'' frame to create the folding

mechanism catch. A spring and ''C'' clamp are added to the release pin on both sides of the walker.

• A flat folding guide plate is riveted to both sides on top of the release pins. Two rivets are used to secure the plate. One rivet is used to secure the side frame. The other is used to secure the folding guide plate to the ''H'' frame.

• The rivet that holds the flat folding guide plate to the ''H'' frame is outfitted with a plastic guide washer by placing the guide washer over the rivet during installation. This process allows for smooth operation when opening and folding the walker. The rivet is calibrated in tension for smooth operation and to reduce ''wobble.''

• A plastic release button is riveted to the flat folding guide that initiates the folding mechanism. Pushing the plastic release activates the release pin.

• The rivet that secures the plastic release pad is calibrated to ensure a positive ''click'' when securely opened and for easy functioning.

• Four brass buttons are inserted into the four legs of the side frames. The brass buttons are inserted into the leg of the walker. A wire spring is added to the button before insertion.

• Four anti-rattle bushings are pressed and hammered to the bottom of each side frame leg.

• A silencer cap and tip are pressed and hammered to each external adjustable height leg and assembled to the walker.

• A rubber tip is heated in this process to ensure a snug fit.

• The legs are attached to the walker to ensure the proper fit and are then removed for shipping.

• Operation stickers and manuals are added to the walker.

• The walker is individually bagged, boxed and shipped.

You further state as follows. The walker is manufactured to Drive Medical's specifications in order to impart characteristics of strength, durability, and flexibility. The design of the front cross frame was developed in the U.S. The calibration of the opening and closing mechanism is important to the operation of the walker in that it is essential that the user of the walker be able to open and close it with little effort. You state that the cost of the two ''U'' frame side pieces is approximately 52 percent of the total cost of the components and the cost of manufacturing in Hong Kong (including the cost of the two ''U'' frame side pieces) is 70 to 80 percent of the total cost of the walker.

Issue

What is the country of origin of the subject walkers for the purpose of U.S. Government procurement?

Law and Analysis

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 Procurement Regulations. See 19 CFR 177.21. In this regard, CBP recognizes that the Federal Procurement 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 Procurement 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. *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.

You cite HQ H017620, dated February 5, 2008, where CBP held that certain imported components of a flashlight and replacement lens head subassembly were substantially transformed as a result of manufacturing operations in the U.S. In that ruling, CBP stated:

In support of this conclusion, we agree that the U.S.-origin LED imparts the essential character to both the replacement part and the finished product, as it generates the primary light of both products. We also recognize that Energizer has expended significant resources in connection with the design and development of the subject flashlight in the United States. Moreover, the U.S.-origin LED and the labor performed in the United States during the assembly and testing operations represent a majority of the costs associated with the production of both the replacement lens head subassembly and the finished flashlight.

After a consideration of the evidence of record, we find that the operations in Hong Kong, including the manufacture in Hong Kong of the two ''U'' side frame pieces, will result in a substantial transformation of the components imported into Hong Kong. In making this finding, we note that all of the assembly operations will occur in Hong Kong and that the two ''U'' side frame pieces, which are manufactured in Hong Kong, are extremely vital parts of the walkers.

Based upon this finding, we determine that the country of origin of the walkers for the purpose of government procurement is Hong Kong.

Holding

The operations to be performed in Hong Kong will result in a substantial transformation of the goods imported into Hong Kong from China. Therefore, the country of origin of the walkers for the purpose of government procurement is Hong Kong.

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,
Sandra L. Bell
Executive Director
Office of Regulations and Rulings
Office of International Trade.

[FR Doc. E8–25979 Filed 10–30–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–44]

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: October 31, 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: October 23, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–25737 Filed 10–30–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–08–1610–DP; HAG 08–0051]

Notice of Availability of Draft John Day Basin Resource Management Plan and Draft Environmental Impact Statement, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the John Day Basin planning area and by this notice is announcing the opening of the comment period.

DATES: To ensure that they will be considered, BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

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

- *Mail:* John Day Basin RMP, BLM Prineville Field Office, 3050 NE 3rd Street, Prineville, OR 97754.
- *Web Site: http://www.blm.gov/or/districts/prineville/plans/johndayrmp/index.php.*
- *E-mail: John_Day_Basin_RMP@blm.gov.*
- *Fax:* (541) 416–6798.

Copies of the John Day Basin Draft RMP/EIS are available in the Prineville Field Office and on our project Web site (see **ADDRESSES** above), in addition to copies sent to individuals, organizations, and agencies on the John Day Basin RMP mailing list.

FOR FURTHER INFORMATION CONTACT: Ayn Shlisky, John Day Basin RMP Project Leader, BLM Prineville Field Office, 3050 NE 3rd Street, Prineville, OR 97754, phone (541) 416–6700, e-mail *John_Day_Basin_RMP@blm.gov*.

SUPPLEMENTARY INFORMATION: The planning area is located in parts of Sherman, Gilliam, Morrow, Umatilla, Grant, Wheeler, Jefferson, and Wasco Counties in the State of Oregon, covering 456,000 acres of BLM-managed public land. The existing RMPs for the area were completed in the 1980s: John Day RMP (Record of Decision signed 1985), Two Rivers RMP (1986), and Baker RMP (1989). The John Day RMP was amended in 1995, and in 2001, the John Day River Plan amended portions of all three of the RMPs. New information and changed circumstances are cause for the BLM to update these plans. Changed circumstances include, but are not limited to: Acquisition of 44,000 acres along North Fork John Day River, heightened public interest in BLM management actions, increasing demand for recreation activities on public lands, and expanded scientific knowledge and information pertaining to the conservation of aquatic species.

In February 2006, the BLM published a Notice of Intent to prepare an EIS and initiate revision/amendment of the existing RMPs. This was followed in March 2006 by five public open houses across the planning area and in Portland, Oregon to solicit public input on the issues to be addressed. The BLM published results of public input and an Analysis of the Management Situation in December 2006, followed by four public open houses across the planning area to solicit input on criteria to be used in development of alternatives. The BLM also met regularly with the John Day/Snake Resource Advisory Council and with representatives of local, state, and other Federal government agencies, as well as tribal governments. Additionally, the BLM maintained a public Web site and mailed periodic newsletters with information on the plan's status.

The Draft RMP/EIS analyzes five alternatives. Alternative 1 (no action) would continue the current management goals, objectives, and direction specified in the existing RMPs. Alternative 2 (BLM preferred alternative) would provide a mix of recreational opportunities, economic opportunities, and resource protection. Changes from Alternative 1 to 2 include: (a) Development of an interim road system and a process for developing a final transportation plan; (b) a reduction in areas ''open'' for motorized use off of roads; (c) synthesized management direction to achieve forest and upland health goals while providing for timber and forage production and wildfire prevention; (d) management direction for the North Fork John Day River lands that, in accordance with the land acquisition legislation, protects native fish, wildlife habitat, and public recreation; (e) addition of an integrated strategy to address fish, water quality, and water quantity together; (f) management direction for 11,929 acres containing wilderness characteristics not already protected by Wilderness or Wilderness Study Area (WSA) provisions; (g) use of ''appropriate management response'' rather than full suppression of all wildfires; and (h) a process for identifying and addressing management concerns in grazing allotments. Alternatives 3, 4, and 5 are similar to Alternative 2 in most instances, but provide variation in the amount of roadway open for motorized travel, the number of areas open to off-road motorized use, the number and classifications of river segments deemed suitable for inclusion in the National Wild and Scenic River System, and the

number of acres where livestock grazing is permitted.

The BLM preferred alternative (Alternative 2) and Alternatives 3, 4, and 5 (the action alternatives) propose immediate designation of five new Areas of Critical Environmental Concern (ACEC), totaling 61,254 acres. This total does not include expansion of the existing Horn Butte ACEC from 5,999 to 7,152 acres, nor the 6,639-acre Black Canyon Research Natural Area (RNA)/ ACEC, which overlaps a portion of the John Day Paleontological ACEC. The largest of the newly proposed ACECs is the 38,168-acre John Day Paleontological ACEC that would complement the adjacent John Day Fossil Beds National Monument and partially overlap with the existing Sutton Mountain WSA. Resource use limitations associated with designation of this ACEC where it overlaps the WSA would include closure to salable, locatable and leaseable minerals, a No Surface Occupancy (NSO) stipulation for energy and communication site development, exclusion from rights-of-way, management to Visual Resource Management Class II (VRM II) standards, and limiting vehicle use to designated roads and trails (OHV Limited). Use limitations associated with this ACEC where it does not overlap with the Sutton Mountain WSA would be similar except for a No Surface Occupancy (NSO) stipulation for mineral leasing, and avoidance of developments for energy, communication sites, and rights-of-way. Other proposed ACECs include the 6,639-acre Black Canyon RNA/ACEC, which would protect several sensitive plants and unique plant communities; use limitations include exclusion of livestock grazing, closure to off-highway motorized and non-motorized vehicle use (OHV Closed), an NSO stipulation for mineral leasing, closure to salable mineral, energy and communication site development, and exclusion of rights-of-way. The action alternatives also propose to add 1,152 acres to the existing 5,999-acre Horn Butte ACEC to protect Washington ground squirrel habitat. Use limitations for the expanded Horn Butte ACEC also include management to VRM II standards, prohibition of mechanical noxious weed control in Fourmile Canyon, NSO stipulation for mineral leasing, closure to salable minerals and energy and communication site development, and exclusion of rights-of-way. Also proposed is the addition of the North Fork John Day River (16,837 acres), Armstrong Canyon (3,885 acres) and Ferry Canyon (2,364 acres) ACECs to protect visual resource values; use limitations include management to VRM II standards, NSO stipulation for mineral leasing, closure to communication site development, and exclusion of rights-of-way. The action alternatives also eliminate the existing Spanish Gulch ACEC (333 acres). In the event that Congress releases any of the three WSAs along the lower John Day River (Lower John Day, North Pole Ridge, and Thirtymile) from WSA status, the released lands would be designated as ACECs to preserve scenic and other values. Use limitations would include management to VRM II standards, NSO stipulation for mineral leasing and closure to salable minerals, closure to energy and communication site development, and exclusion of rights-of-way (except for the existing PGE pipeline right-of-way). For more detailed information on each ACEC proposal, see the Special Designations section in the Draft RMP/EIS.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your written comments, you should be aware that your entire letter, including your personal identifying information, may be made publicly available at any time. While you can ask us in your letter to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 43 CFR 1610.2.

Edward W. Shepard,

State Director, Oregon/Washington.

[FR Doc. E8–25926 Filed 10–29–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–07–1320–EL; COC–72980]

Notice of Federal Competitive Coal Lease Sale Offer, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale, Lease Application COC–72980.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM), Colorado State Office, will offer certain coal resources describe below as Federal coal lease application (LBA) COC–72980 in Routt County, Colorado, for competitive sale by sealed bid, in accordance with the provisions for competitive lease sales in 43 CFR 3422.2(a), and the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq*.).

DATES: The lease sale will be held at 10 a.m., Wednesday, January 14, 2008. Sealed bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., Wednesday, January 14, 2008. The BLM cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that the envelope contains a bid for Coal Lease Sale COC–72980, and is not to be opened before the date and hour of the sale.

ADDRESSES: The lease sale will be held in the BLM Colorado State Office, Conference Room, Fourth Floor, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted, hand delivered or mailed to BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kurt Barton at BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, or by telephone 303–239–3714.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a LBA filed by Twentymile Coal Company, April 8, 2008. The coal resource to be offered consists of recoverable coal reserves in the TCC Wadge seam mined by underground mining methods in the following lands:

T. 5 N., R. 87 W., 6th P.M.
Sec. 22, E½SW¼, SE¼;
Sec. 27, W½NE¼, E½ NW¼, N½NE¼SW¼, W½SE¼;

Containing approximately 500 acres in Routt County, Colorado.

Total recoverable reserves are estimated to be 1.4 million tons. The underground minable coal is ranked as sub bituminous B coal. The estimated coal quality on an as-received basis for the seams are as follows:

TCC WADGE SEAM

BTU/lb	12,561
Volatile Matter	33.52%
Moisture	8.55%
Fixed Carbon	44.92%

TCC WADGE SEAM—Continued

Sulfur Content	0.49%
Ash Content	9.94%

The tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid meets the FMV for the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

The required Detailed Statement for the offered tract, including bidding instructions and sales procedures under 43 CFR 3422.3–2, and the terms and conditions of the proposed coal lease, is available from BLM Colorado State Office at the addresses above. Case file documents and written comments for COC–72980 submitted by the public on FMV or royalty rates, except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room.

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.

Kurt Barton,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E8–26014 Filed 10–30–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1420–BJ–TRST; Group No. 192, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat Of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM—Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fourth Principal Meridian, Minnesota

T. 42 N., R. 27 W.

The plat of survey represents the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of section 5 and the re-establishment of the record meander line on the west side of Ogechie Lake in section 5, Township 42 North, Range 27 West of the Fourth Principal Meridian, Minnesota, and was accepted October 15, 2008. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 21, 2008.

Ronald J. Eberle,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–26007 Filed 10–30–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–2920–EQ]

Notice of Realty Action; Land Use Authorization for Public Lands in Fremont and Chaffee Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Christo and Jeanne Claude Over the River Corporation (OTR Corp.) has submitted a written proposal for a land use authorization to construct and display a temporary work of art titled *Over the River™*, pursuant to Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), using noncompetitive permit procedures as provided in regulations at 43 CFR 2920. Interested parties may submit comments to the BLM at the address stated below with respect to:

(1) The decision of the BLM regarding the potential availability of the lands described herein, and

(2) The decision of the BLM to entertain an application from OTR Corp. for a non-competitive land use permit.

DATES: Interested parties may submit comments in writing to the BLM at the address given below on or before December 15, 2008.

ADDRESSES: Field Manager, Royal Gorge Field Office, Bureau of Land Management, 3028 East Main Street, Cañon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Joe Vieira, at the address given above, by e-mail at *rgfo_comments@blm.gov*, or by phone at (719) 269–8708.

SUPPLEMENTARY INFORMATION: The *Over the River™* proposal submitted by OTR Corp. includes exhibit installation, a large-scale art exhibition and visitor event, and exhibit removal actions, including site restoration. The *Over the River™* proposal would involve 911 porous fabric panels, weighing an average 140 lbs/panel, suspended 8 to 25 feet above the water for a total of 5.9 miles over a 40 mile stretch of the Arkansas River, between Cañon City and Salida. The public art project would be constructed utilizing an estimated 8,992 steel anchors drilled along and into the banks of the Arkansas River to support 2,247 steel anchor transition frames for an estimated 1,264 steel cables that would support the fabric panels. OTR Corp also proposes a 4,000 square foot temporary building and a temporary gravel access road on the public land to stage art installation and removal as well as manage the large-

scale visitor event. The entire *Over the River™* event would attract an estimated 560,000 visitors over the course of 700-days from installation to removal.

The public land, consisting of approximately 2,470 acres, is in western Fremont and southeast Chaffee Counties, and within the Arkansas River corridor between the cities of Cañon City and Salida, Colorado. The footprint of the actual project will encumber approximately 310 acres of the lands listed below. The lands are located within:

Sixth Principal Meridian, Colorado

T. 18 S., R. 72 W.,
Sec. 14, lot 2, E½NW¼, and SW¼NW¼;
Sec. 15, SE¼NE¼, SW¼, and N½SE¼;
Sec. 20, E½SE¼;
Sec. 21, NW¼NE¼, NE¼NW¼, W½NW¼, and W½SW¼;
Sec. 30, N½NE¼;
T. 18 S., R. 73 W.,
Sec. 25, N½SW¼, and NW¼SE¼;
Sec. 26 NE¼SE¼;
T. 19 S., R. 73 W.,
Sec. 4, S½NW¼, and N½SW¼;
Sec. 5, S½;
Sec. 7, lots 5, 10 and 11, MS 326, tract 46B, and tract 46A excluding those lands conveyed by Patent No. 3713;
Sec. 8, NW¼NW¼, MS 326.

New Mexico Principal Meridian, Colorado

T. 49 N., R. 9 E.,
Sec. 10, lot 19;
Sec. 13, SW¼NW¼;
Sec. 14, N½N½ excluding MS 18410, S½NE¼, and SE¼NW¼;
Sec. 15, N½NE¼NE¼, SW¼NE¼NE¼, and NW¼NE¼;
T. 49 N., R 10 E.,
Sec. 28, lots 4, 5, and 6;
Sec. 29, lots 1 and 8;
T. 48 N., R. 11 E.,
Sec. 18, E½NW¼SE¼, and SE¼SE¼.

Extensive scoping has been completed on the proposed project. Three public meetings were held in Cañon City, Cotopaxi, and Salida, Colorado. Over 700 people attended the public meetings.

The BLM has determined the proposed use of the above described tracts of land is in conformance with the Royal Gorge Resource Management Plan (May 1996), and that the above described land is available for that use. Natural resource and public safety issues have been identified and will be addressed in the Environmental Impact Statement including:

- Arkansas Canyonlands Area of Critical Environmental Concern (ACEC);
- Scenic (visual) resources;
- Bighorn sheep habitat;
- Raptor and migratory bird habitat;
- Recreation resources;
- Physical resources;
- Cultural/historic resources.

The BLM will estimate the costs of processing the land use permit application. Before the BLM begins to process the application, the applicant must pay the full amount of the estimated costs to the United States. If a land use permit is not granted, the applicant must pay to the United States, in addition to the estimated costs, the reasonable costs incurred by the BLM in processing the land use permit in excess of the estimated costs.

Adverse comments will be evaluated by the BLM Field Manager, Royal Gorge Field Office, who may sustain, vacate or modify this realty action. In the absence of any adverse comment, this realty action will become a final determination of the BLM as to each one of the two decisions stated above.

Roy L. Masinton,

Field Manager, Royal Gorge Field Office.

[FR Doc. E8–26076 Filed 10–30–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–110–1610–029J, UT–060–1610–016J, UT–070–1610–011J, UT–050–1610–012J, UT–080–1610–010J]

Notice of Availability of Record of Decision for the Kanab, Moab, Price, Richfield, and Vernal Approved Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The BLM announces the availability of the Approved Resource Management Plans (RMPs)/Records of Decision (RODs) for the Kanab, Moab, Price, Richfield, and Vernal Field Offices located in Utah. The Department of the Interior Assistant Secretary for Land and Minerals Management signed the RODs for the Kanab, Moab, Price, Richfield, and Vernal planning areas on October 31, 2008, which constitute the final decisions of the Department of the Interior and makes the Approved RMPs effective immediately.

ADDRESSES: Copies of the Approved RMPs/RODs are available upon request at each of the five BLM Field Offices:

- BLM Kanab Field Office, 318 North 100 East, Kanab, Utah 84741, or via the Internet at *http://www.blm.gov/ut/st/en/fo/kanab/planning/html*
- BLM Moab Field Office, 82 East Dogwood, Moab, UT 84532, or via the Internet at http://www.blm.gov/ut/st/en/fo/moab/planning/html
- BLM Price Field Office, 125 South 600 West, Price, Utah 84501, or via the Internet at *http://www.blm.gov/ut/st/en/fo/price/planning/html*
- BLM Richfield Field Office, 150 East 900 North, Richfield, Utah 84701, or via the Internet at *http://www.blm.gov/ut/st/en/fo/richfield/planning/html*
- BLM Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, or via the Internet at *http://www.blm.gov/ut/st/en/fo/vernal/planning/html*.

FOR FURTHER INFORMATION CONTACT:

- BLM Kanab Field Office, Harry Barber, Field Office Manager, telephone (435) 644–4600; 318 North 100 East, Kanab, Utah 84741.
- BLM Moab Field Office, Brent Northrup, RMP Project Manager, telephone (435) 259–2100; 82 East Dogwood, Moab, Utah 84532.
- BLM Price Field Office, Floyd Johnson, Assistant Field Office Manager, telephone (435) 636–3600; 125 South 600 West, Price, Utah 84501.
- BLM Richfield Field Office, John Russell, Land Use Planner, telephone (435) 896–1532; 150 East 900 North, Richfield, Utah 84701.
- BLM Vernal Field Office, Howard Cleavinger, Assistant Field Office Manager, telephone (435) 781–4480; 170 South 500 East, Vernal, Utah 84078.

SUPPLEMENTARY INFORMATION: These five Approved RMPs were developed with multiple opportunities for public participation through multi-year collaborative planning processes. The BLM sought participation from the public, tribes, and local, State, and Federal agencies in the development of these five RMPs and will continue to pursue partnerships in the management of public lands. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the five Proposed RMPs and Final Environmental Impact Statements (EIS). The Approved RMPs are designed to achieve or maintain desired future conditions identified through the planning processes.

The Kanab Field Office Approved RMP/ROD addresses management of approximately 550,000 acres of BLM-administered surface lands and an additional 96,600 acres of federally owned mineral estate in Kane and Garfield Counties, Utah. The planning effort addressed a variety of management issues, including: Visual resources; recreation and off-highway vehicle management; special designations including Areas of Critical Environmental Concern (ACEC) and suitability recommendations for wild and scenic rivers; cultural resources; lands with wilderness characteristics;

range management and livestock grazing; mineral resources; and special status species, among others. The Kanab Approved RMP/ROD is nearly the same as Alternative B in the Kanab Proposed RMP/Final EIS, published in July 2008, and carries forward the designation decisions for two ACECs, as described in the Proposed RMP/Final EIS.

The Moab Field Office Approved RMP/ROD addresses management of approximately 1.8 million acres of BLM-administered surface lands and 1.9 million acres of federally owned mineral estate in Grand County and a small portion of San Juan County, Utah. The planning effort addressed a variety of management issues, including: Recreation opportunities especially within Special Recreation Management Areas; off-highway vehicle management; cultural resources; special designations including ACECs and suitability recommendations for wild and scenic rivers; lands with wilderness characteristics; visual resources; range management and livestock grazing; oil, gas and mining; and special status species, among others. The Moab Approved RMP/ROD is nearly the same as Alternative C in the Moab Proposed RMP/Final EIS, published in August 2008, and carries forward the designation decisions for five ACECs, as described in the Proposed RMP/Final EIS.

The Price Field Office Approved RMP/ROD addresses management of approximately 2.5 million acres of BLM-administered surface lands and 2.8 million acres of federally owned mineral estate in Emery and Carbon Counties, Utah. The planning effort addressed a variety of management issues, including: Oil and gas leasing; management of recreation opportunities in Special Recreation Management Areas; visual resources; off-highway vehicle management; special designations, including ACECs and suitability recommendations for wild and scenic rivers; range management and livestock grazing; lands with wilderness characteristics; and cultural resources, among others. The Price Approved RMP/ROD is the nearly the same as Alternative D in the Price Proposed RMP/Final EIS, published in August 2008, and carries forward the designation decisions for 13 ACECs, as described in the Proposed RMP/Final EIS.

The Richfield Field Office Approved RMP/ROD addresses management of approximately 2.1 million acres of BLM-administered surface lands and 3.0 million acres of federally owned mineral estate in Garfield, Piute, Sanpete, Sevier and Wayne Counties, Utah. The planning effort addressed a variety of resource issues, including: Visual resources; recreation and off-highway vehicle management; lands with wilderness characteristics; cultural resources; special designations, including ACECs and suitability recommendations for wild and scenic rivers; range management and livestock grazing; minerals and energy resources; and special status species, among others. The Richfield Approved RMP/ROD is the nearly the same as Alternative B in the Richfield Proposed RMP/Final EIS, published in August 2008, and carries forward the designation decisions of two ACECs, as described in the Proposed RMP/Final EIS.

The Vernal Field Office Approved RMP/ROD addresses management of approximately 1.7 million acres of BLM-administered surface lands and 2.8 million acres of federally owned mineral estate in Daggett, Duchesne, and Uintah Counties, Utah. The planning effort addressed a variety of management issues, including: Oil and gas leasing; rights-of-way; recreation and off-highway vehicle management; cultural resources; special designations, including ACECs and suitability recommendations for wild and scenic rivers; range management and livestock grazing; and special status species, among others. The Vernal Approved RMP/ROD is the nearly the same as Alternative A in the Vernal Proposed RMP/Final EIS, published in August 2008, and carries forward the designation decisions for seven ACECs, as described in the Proposed RMP/Final EIS.

The BLM Director's Office has dismissed or resolved each of the 87 protests received, thus allowing for immediate implementation of the Approved RMPs. These RODs serve as the final decision by the Department of the Interior for the land use plan and implementation-level decisions in the Approved RMP.

Jeff Rawson,

Acting State Director.

[FR Doc. E8–26089 Filed 10–30–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Windy Gap Firming Project; Colorado—Big Thompson Project, Grand and Larimer Counties, CO

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for Extension of the Public Comment Period for the Draft Environmental Impact Statement (Draft EIS).

SUMMARY: The Bureau of Reclamation is announcing a 62-day extension of the public comment period for the Windy Gap Firming Project Draft Environmental Impact Statement. The originally announced comment period ends on October 28, 2008, but has been extended until December 29, 2008. The original Notice of Availability of the Draft Environmental Impact Statement (Draft EIS) and Announcement of Public Hearings was published in the **Federal Register** (73 FR 50999) on August 29, 2008.

DATES: Comments on the Draft EIS should be postmarked no later than December 29, 2008.

ADDRESSES: Comments on the Draft EIS should be sent to the attention of: Will Tully, Bureau of Reclamation, 11056 West County Rd. 18E, Loveland, CO 80537.

FOR FURTHER INFORMATION CONTACT: Kara Lamb at 970–962–4326 or *klamb@gp.usbr.gov* or Will Tully at 970–962–4368 or *wtully@gp.usbr.gov*. Mail requests should be addressed to the Bureau of Reclamation at the address indicated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Public Disclosure Statement

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 27, 2008.

Roxanne E. Peterson,

Acting Assistant Regional Director, Great Plains Region.

[FR Doc. E8–26011 Filed 10–30–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act. This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

Dates and Times: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 3–4, 2008.

ADDRESSES: The meeting will take place at the Royal Plaza Hotel, Lake Buena Vista, Florida, (407) 828–2828.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Rebecca S. Durrett; Management and Program Analyst; Advisory Groups Management Unit, Liaison, Advisory, Training and Statistics Section; FBI CJTS Division; Module C3; 1000 Custer Hollow Road; Clarksburg; West Virginia 26306–0149; telephone (304) 625–2617; facsimile (304) 625–5090.

Dated: October 17, 2008.

Roy G. Weise,

Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. E8–25796 Filed 10–30–08; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Requirements for the Preparation and Maintenance of Accurate and Up-to-Date Mine Maps (Pertains to Underground and Surface Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 30, 2008.

ADDRESSES: Send comments to Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, and 75.1203 require underground coal mine operators to have in a fireproof repository in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazards, an accurate and up-to-date map of such mine drawn on scale. These standards specify the information which must be shown, the range of acceptable scale, the surveying technique or equivalent accuracy required of the surveying which must be used to prepare the map, that the maps must be certified as accurate by a registered engineer or surveyor, that the maps must be kept continuously up-to-date by temporary notations and must be revised and supplemented to include the temporary notations at intervals not more than 6 months. In addition, the mine operator must provide the MSHA District Manager a copy of the certified mine map annually during the operating life of the mine. These maps are essential to the planning and safe operation of the mine. In addition, these maps provide a graphic presentation of the locations of working sections and the locations of fixed surface and underground mine facilities and equipment, escapeway routes, coal haulage and man and materials haulage entries and other information essential to mine rescue or mine fire fighting activities in the event of mine fire, explosion or inundations of gas or water. The information is essential to the safe operation of adjacent mines and mines approaching the worked out areas of active or abandoned mines. Section 75.372 requires underground mine operators to submit three copies of an up-to-date mine map to the District Manager at intervals not exceeding 12 months.

Title 30 CFR 75.1204 and 75.1204–1 require that whenever an underground coal mine operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of 90 days, the operator shall file with MSHA a copy of the mine map revised and supplemented to the date of closure. Maps are retained in a repository and are made available to mine operators of adjacent properties. The maps are necessary to provide an accurate record of underground areas that have been mined to help prevent active mine operators from mining into abandoned areas that may contain water or harmful gases.

Title 30 CFR 77.1200, 77.1201 and 77.1202 require surface coal mine operators to maintain an accurate and up-to-date map of the mine and specified the information to be shown on the map, the acceptable range of map scales, that the map be certified by a registered engineer or surveyor, and that the map be available for inspection by the Secretary or his authorized representative. These maps are essential for the safe operation of the mine and provide essential information to operators of adjacent surface and underground mine operators. Properly prepared, effectively utilized surface mine maps can prevent outbursts of water impounded in underground mine workings and/or inundations of underground mines by surface impounded water or water and or gases impounded in surface auger mining worked out areas.

Title 30 CFR 75.373 and 75.1721 require that after a mine is abandoned or declared inactive and before it is reopened, mine operations shall not begin until MSHA has been notified and has completed an inspection. Standard 75.1721 specifies that the notification be in writing and lists specific information, preliminary arrangements and mine plans which must be submitted to the MSHA District Manager.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Mine Closure addressed in 30 CFR 75.1204 and 75.1204–1; the inclusion of standards requiring MSHA notification and inspection prior to mining when opening a new mine or reopening an inactive or abandoned mine addressed in 30 CFR 75.373 and 75.1721; and the inclusion of standards requiring underground and surface mine operators to prepare and maintain accurate and up-to-date mine maps addressed in 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75.372, 77.1200, 77.1201 and 77.1202. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', and then selecting ''Fed Reg Docs.''

III. Current Actions

Mine operators are required to conduct surveying such that mine maps are maintained accurate and up-to-date, the maps must be revised every 6 months and certified accurate by a registered engineer or surveyor and to submit copies of the certified underground maps to MSHA annually and an up-to-date and revised mine closure map whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than 90 days, he or she shall promptly notify the Secretary of such closure.

In addition, mine operators must notify MSHA so that an inspection can be conducted whenever a new mine is opened or a previously abandoned or inactive mine is reopened. The information required to be gathered and recorded on mine maps is essential to the safe operation of the mine and essential to the effectiveness of mandatory inspections and mandated mine plan approval by MSHA. Such information cannot be replaced by any other source and anything less than continuously updated and accurate information would place miners' safety at risk.

The information collected through the submittal of mine closure maps is used by operators of adjacent coal mines when approaching abandoned underground mines. The abandoned mine could be flooded with water or contain explosive amounts of methane or harmful gases. If the operator were to mine into such an area, unaware of the hazards, miners could be killed or seriously injured. In addition, it is in the public interest to maintain permanent records of the locations, extent of workings and potential hazards associated with abandoned mines. The public safety can be adversely affected by future land usage where such hazards are not known or inaccurately assessed. MSHA collects the closure maps and provides those documents to the Office of Surface Mining, Reclamation & Enforcement for inclusion in a repository of abandoned mine maps. Therefore, MSHA is continuing the certification and application of 30 CFR 75.1204 to assure the required information remains available for the protection of miners' and public safety. In addition, MSHA has added the burden hours and cost estimates for standards which address the preparation and maintenance of certified mine maps for surface and underground coal mines and the notification of MSHA prior to the opening on new coal mines or the reopening of inactive or abandoned mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Requirements for the Preparation and Maintenance of Accurate and Up-to-Date Mine Maps (pertains to underground and surface coal mines).

OMB Number: 1219–0073.

Recordkeeping: Annual or on occasion.

Affected Public: Business or other for-profit.

Number of Responses: 737.

Number of Respondents: 1,453.

Total Burden Hours: 14,572.

Total Burden Cost (operating/maintaining): $18,221,257.

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

Dated at Arlington, Virginia, this 28th day of October 2008.

David L. Meyer,

Director of Administration and Management.

[FR Doc. E8–25981 Filed 10–30–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of

the information collection related to the 30 CFR Sections:

75.1901(a)—Diesel Fuel Requirements; 75.1904(b)(4)(i)—Underground Diesel Fuel Tanks and Safety Cans; 75.1906(d)—Transport of diesel fuel; 75.1911(i) and (j)—Fire Suppression Systems for Diesel-Powered Equipment and Fuel Transportation Units; 75.1912(h) and (i)—Fire Suppression Systems for Permanent Underground Diesel Fuel Storage Facilities; 75.1914(f)(1), (2), (g)(5), (h)(1), and (2)—Maintenance of Diesel-Powered Equipment; and 75.1915(a), (b)(5), (c)(1) and (2)—Training and Qualification of Persons Working on Diesel-Powered Equipment.

DATES: Submit comments on or before December 30, 2008.

ADDRESSES: Send comments to Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via E-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The regulation addresses three major areas: Diesel engine design and testing requirements; safety standards for the maintenance and use of this equipment; and exhaust gas sampling provisions to protect miners' health. It first requires that diesel engines and their critical components meet design specifications and tests to demonstrate that they are explosion-proof and will not cause a fire in a mine where methane may accumulate. Second, the safety requirements for diesel equipment include many of the proven features required in existing standards for electric-powered equipment, such as cabs or canopies, methane monitors, brakes and lights. The regulation also sets safety requirements for fuel handling and storage and fire suppression. Third, sampling of diesel exhaust emissions is required to protect miners from overexposure to carbon monoxide and nitrogen dioxide contained in diesel exhaust.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the approval, exhaust gas monitoring and safety requirements for the use of diesel-powered equipment in underground coal mines. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Rules and Regs'' and ''FedReg. Docs''.

III. Current Actions

Provisions under part 75 establish mandatory safety standards for diesel-powered equipment for use in underground coal mines, minimum ventilating air quantities, the incorporation of the air quantities into the mine ventilation plan, requirements for routine sampling of toxic exhaust gases, and the use of low sulfur diesel fuel. It also provides that diesel equipment maintenance be performed by adequately trained persons. In addition, the regulation includes standards for storage, transportation and dispensing of diesel fuel, and the installation and maintenance of fire suppression systems on diesel equipment and in permanent underground fuel storage facilities.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.

OMB Number: 1219–0119.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Total Respondents: 213.

Total Responses: 180,252.

Total Burden Hours: 42,826.

Total Burden Cost (operating/maintaining): $428,272.

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

Dated at Arlington, Virginia, this 28th day of October 2008.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E8–25980 Filed 10–30–08; 8:45 am]

BILLING CODE 4510–43–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–01]

Notice of First Amendment to Compact With the Government of Georgia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 609(i)(2) of the Millennium Challenge Act of 2003, as amended (Pub. L. 108–199, Division D), the Millennium Challenge Corporation is publishing a summary, justification and the proposed text of the First Amendment to Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of Georgia. Representatives of the United States Government and the Government of Georgia plan to execute this draft text in 2008.

Dated: October 28, 2008.

Henry C. Pitney,

Deputy General Counsel, Millennium Challenge Corporation.

Summary of First Amendment to Millennium Challenge Compact With the Government of Georgia

The Board of Directors of the Millennium Challenge Corporation (''MCC'') has approved an amendment (the ''Amendment'') to the existing approximately US$295.3 million, five-year Millennium Challenge Compact between the United States of America, acting through MCC, and the Government of Georgia (the ''Compact'').

Background

The Compact was signed September 12, 2005 and entered into force on April 7, 2006. Compact projects focused on

rehabilitating infrastructure for transportation, energy, and municipal water services and investing in small and medium enterprises outside of Tbilisi. Currently, all Compact activities are in implementation. The Millennium Challenge Georgia Fund (''MCG'') has disbursed over US$70 million and committed over US$200 million through signed contracts.

Scope of the Amendment

MCC proposes to make up to US$100 million in additional funding available under the Compact. The proposed additional funding is necessary to complete works contemplated by the original Compact in the Roads, Regional Infrastructure Development and Energy Activities. Due to cost overruns and a declining dollar, MCC cannot fully fund these projects as originally contemplated by the Compact.

Reasons for the Amendment

The Compact Amendment will allow for the completion of the Road Rehabilitation Activity as set forth in the Compact. The Amendment will also permit the expansion of the Regional Infrastructure Development (''RID'') Activity and the Energy Activity in ways consistent with the original Compact. Additionally, furthering MCC's investment in Georgia can boost investor confidence and contribute to economic stability. Such effects, together with the direct impacts of the original Compact, promote Georgia's economic growth and assist the millions of Georgians who live in poverty.

A. Road Rehabilitation Activity

Approximately US$60 million of the additional funding would be used to build three sections of road that, although originally contemplated by the Compact, could not be constructed because of cost overruns and a shortage of funds. Those sections will fully connect the Samtskhe-Javakheti region to Turkey and Central Georgia and will upgrade a road to the principal tourist attraction in the region.

B. Regional Infrastructure Development Activity

The RID is an investment facility authorized to fund improvements to municipal infrastructure. Approximately US$26 million will be made available to the RID to make up for funds that were previously reallocated to the Road Rehabilitation Activity and adjust for the decline of the dollar. Approximately US$18.5 million will be used to complete the Borjomi and Kobuleti water systems by building waste water networks. A municipal water system is made up of several components: A water supply, a potable water network, a waste water treatment plant and a waste water network. MCC had already committed to rehabilitate the water supplies and potable water networks. The European Bank for Reconstruction and Development and other donors have agreed to finance the waste water treatment plants. The additional funding will permit MCC to finish these water projects in their entirety. Approximately US$5 million will be used to further complete rehabilitation of the Kutaisi potable water system. MCC has already committed to rehabilitate the pumps, the pipeline transmitting water to Kutaisi and the water distribution network in a portion of the city. The additional funds will permit rehabilitation of the distribution network in more of the city. The remaining funds will be used to fund feasibility studies and designs for future funding by donors.

C. Energy Activity

The Compact provided US$5 million to ''support the Ministry of Energy to further develop and implement its energy sector strategy, including * * * providing technical and feasibility studies.'' An initial feasibility study has already begun focusing on underground gas storage—a critical element to Georgia's energy security and strategy to reduce seasonal fluctuations in gas prices. The additional US$13 million permits MCC to finish a full economic, geological and environmental study, technical design and public/private financing plan for the gas storage facility and associated infrastructure.

First Amendment to Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of Georgia; First Amendment to Millennium Challenge Compact

This First Amendment To Millennium Challenge Compact (this ''*Amendment*''), dated as of [_____], 2008 is made by and between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''*MCC*''), and the Government of Georgia (the ''*Government*'') (each referred to herein individually as a ''*Party*'' and collectively, as the ''*Parties*''). All capitalized terms used in this Amendment that are not otherwise defined herein have the meanings given to such terms in the Compact (as defined below).

Recitals

Whereas, the Parties entered into that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government, on September 12, 2005 (the ''*Compact*''), pursuant to which MCC granted to the Government, subject to the terms and conditions of the Compact, an amount not to exceed Two Hundred Ninety-Five Million Three Hundred Thousand United States Dollars (US$295,300,000) for a program to reduce poverty through economic growth in Georgia;

Whereas, MCC now desires to grant additional funding to the Government in an amount not to exceed One Hundred Million United States Dollars (US$100,000,000) to cover shortfalls in the original budget for the Projects and allow completion of the Projects as originally contemplated by the Compact (the ''*Additional Funding*''); and

Whereas, the Parties desire to amend certain parts of the Compact as more fully described herein to memorialize the Additional Funding;

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein and in the Compact, the Parties hereby agree as follows:

Amendments

1. Amendment to Section 2.1(a)

Section 2.1(a) (*MCC's Contribution*) of the Compact is amended and restated to read as follows:

''(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Three Hundred Ninety-Five Million, Three Hundred Thousand United States Dollars (US$395,300,000) (''*MCC Funding*'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives.''

2. Amendment to Section 5.1

Section 5.1 (*Communications*) of the Compact is amended by (i) deleting the text that reads ''E-mail: *lashanidze@mcg.ge*'' from the notice information for Millennium Challenge Georgia Fund (''MCG'') and (ii) replacing the notice information for MCC with the following:

''To MCC: Millennium Challenge Corporation, Attention: Vice President, Compact Implementation, (with a copy to the Vice President and General Counsel), 875 15th Street, NW., Washington, DC 20005, United States of America, Telephone: +1 (202) 521–3600, Facsimile: +1 (202) 521–3700, E-mail: *VPImplementation@mcc.gov* (Vice

President, Compact Implementation); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)''.

3. Amendment to Section 5.2

Section 5.2 (*Representatives*) of the Compact is amended by deleting the phrase ''Vice President for Country Programs'' from the first sentence thereof and replacing it with ''Vice President, Compact Implementation.''

4. Amendment to Section 5.11

Section 5.11 (*Signatures*) of the Compact is amended by deleting the phrase ''or an amendment to this Compact pursuant to Section 5.3'' from the first sentence thereof.

5. Amendment to Exhibit A

Exhibit A (*Definitions*) of the Compact is amended by amending and restating the definitions of ''Compact,'' ''MCA'' and ''Principal Representative'' appearing therein to read as follows:

''*Compact* means the Millennium Challenge Compact made between the United States of America, acting through the Millennium Challenge Corporation and the Government of Georgia, as amended or otherwise modified from time to time.''

''*MCA* means the Millennium Challenge Account.''

''*Principal Representative* shall have has the meaning set forth in Section 5.2.''

6. Amendment to Schedule 1 to Annex I

Schedule 1 to Annex I (*Regional Infrastructure Rehabilitation Project*) of the Compact is amended by amending and restating Section 2(a)(i) thereof to read as follows:

''(i) Sub-Activities. MCC Funding will be used to rehabilitate or construct, as applicable, the road sections set out below (the ''*Project Road*''), as well as (1) rehabilitate and improve existing bridges along the Project Road alignment, (2) improve existing drainage facilities along the road alignment, (3) provide road safety features, and (4) provide local access and ancillary structures:

(A) Teleti-Koda-Tsalka;

(B) Tsalka-Ninotsminda;

(C) Ninotsminda—the Armenian border;

(D) Akhalkalaki—the Turkish border; and

(E) Khertvisi to Vardzia.''

7. Amendment to Exhibit A to Annex II

Exhibit A to Annex II (*Multi-Year Financial Plan*) of the Compact is amended by inserting a new table at the end thereof to read as set forth in Attachment I to this Amendment, which table sets forth the allocation of the Additional Funding and supplements the information contained in Exhibit A to Annex II.

General Provisions

8. Further Assurances

Each Party hereby covenants and agrees, without necessity of any further consideration, to execute and deliver any and all such further documents and take any and all such other action as may be reasonably necessary or appropriate to carry out the intent and purpose of this Amendment.

9. Effect of This Amendment

From and after the Amendment Effective Date (as defined below), the Compact and this Amendment shall be read together and construed as one document, and each reference in the Compact to the ''Compact,'' ''hereunder,'' ''hereof'' or words of like import referring to the Compact, and each reference to the ''Compact,'' ''thereunder,'' ''thereof'' or words of like import in any Supplemental Agreement or in any other document or instrument delivered pursuant to the Compact or any Supplemental Agreement, shall mean and be construed as a reference to the Compact, as amended by this Amendment.

10. Limitations

Except as expressly amended by this Amendment, all of the provisions of the Compact remain unchanged and in full force and effect.

11. Amendment Effective Date

This Amendment shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that each Party has completed its domestic requirements for entry into force of this Amendment (including as set forth in Paragraph 12) and that all conditions set forth in Paragraph 13 have been satisfied by the Government and MCC (the ''*Amendment Effective Date*'').

12. Domestic Requirements

Promptly after the conclusion of this Amendment, the Government shall proceed in a timely manner to seek domestic ratification of this Amendment as necessary or required by the laws of Georgia, or similar domestic requirement, in order that: (a) This Amendment shall be considered an international agreement under Georgian law, (b) each of the provisions of this Amendment is valid, binding and in full force and effect under the laws of Georgia and (c) the Compact, as amended hereby, continues to be an international agreement and valid, binding and in full force and effect under the laws of Georgia. Notwithstanding anything to the contrary in this Amendment, this Paragraph 12 shall provisionally apply prior to the Amendment Effective Date.

13. Condition Precedent to Amendment Effective Date

As conditions precedent to this Amendment entering into force, the Government shall deliver:

(a) A certificate signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, that:

(i) Certifies that the Government has completed all of its domestic requirements for this Amendment to be fully enforceable under Georgian law; and

(ii) Attaches thereto, and certifies that such attachments are, true, correct and complete, copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Amendment to enter into force and the satisfaction of Paragraph 12, which MCC may post on its Web site or otherwise make publicly available.

(b) A written statement as to the incumbency and specimen signature of the Principal Representative executing this Amendment, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative.

14. English Language

This Amendment is prepared and executed in English and, in the event of any ambiguity or conflict between this official English version and any translation into any language made for the convenience of the Parties, this official English version shall prevail.

15. Governing Law

The Parties acknowledge and agree that this Amendment is an international agreement entered into for the purpose of amending the Compact and as such will be interpreted in a manner consistent with the Compact and will be governed by the principles of international law.

16. Counterparts

This Amendment may be executed in counterparts, each of which shall constitute an original, but when taken together, shall constitute one instrument.

17. Provisional Application

Upon signature of this Amendment, the Parties will provisionally apply this Amendment until the Amendment Effective Date.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Amendment as of the date first written above and this Amendment shall enter into force in accordance with the terms hereof.

Attachment I Supplement to Exhibit A to Annex II of the Compact

ADDITIONAL FUNDING

[USD $ million]

Component	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Regional Infrastructure Rehabilitation Project:						
(a) Road Rehabilitation Project Activity	N/A	N/A	3.00	18.00	39.00	60.00
(b) Regional Infrastructure Development Project Activity	N/A	N/A	1.30	7.80	16.90	26.00
(c) Energy Rehabilitation Project Activity	N/A	N/A	0.65	3.90	8.45	13.00
Sub-Total	N/A	N/A	4.95	29.70	64.35	99.00
4. Program Administration and Control:						
(c) Fiscal and Procurement Management	N/A	N/A	0.20	0.40	0.40	1.00
Total Estimated MCC Contribution	N/A	N/A	5.15	30.10	64.75	100.00

[FR Doc. E8–26090 Filed 10–30–08; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 8 a.m., Friday, October 31, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Consideration of supervisory activities. Closed pursuant to Exemptions (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E8–26197 Filed 10–29–08; 4:15 pm]

BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Meeting of Arts and Artifacts Indemnity Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Domestic Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 817, from 9 a.m. to 5 p.m., on Friday, November 14, 2008.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2009.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Michael McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–25952 Filed 10–30–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #63

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on November 16, 2008, from 12:30 p.m. to 4 p.m. The meeting will be held in the Members' Room, The Library of Congress, Thomas Jefferson Building, 1st Street, SE., between Independence Avenue and East Capitol Street, Washington, DC 20540.

The Committee meeting will begin with welcome, introductions, and announcements. Updates and discussion on recent programs and activities will follow, including a focus on PCAH's international projects. Reports from the federal cultural agencies are also slated. The meeting will include a review of PCAH ongoing programming for youth arts and humanities learning, preservation and conservation, and special events. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Lindsey Clark of the President's Committee staff seven (7) days in advance of the meeting at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Clark.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5560, at least seven (7) days prior to the meeting.

Dated: October 27, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–25978 Filed 10–30–08; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Director, Office of Administration, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

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

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 27, 2008.

June D.W. King,

Director, Office of Administration, National Mediation Board.

Application for Mediation Services

Type of Review: Extension.

Title: Application for Mediation Services, OMB Number: 3140–0002.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 50 annually.

Burden Hours: 12.50.

Abstract: Section 5, First of the Railway Labor Act, 45 U.S.C., 155, First, provides that both, or either, of the parties to the labor-management dispute may invoke the mediation services of the National Mediation Board. Congress has determined that it is in the nation's best interest to provide for governmental mediation as the primary dispute resolution mechanism to resolve labor-management disputes in the railroad and airline industries. The Railway Labor Act is silent as to how the invocation of mediation is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.1 provides that applications for mediation services be made on printed forms which may be secured from the National Mediation Board. This section of the regulations provides that applications should be submitted in duplicate, show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, date and copy of notice served by the invoking party to the other and date of final conference between the parties. The application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act or by the chief executive of the labor organization, whichever party files the application.

The extension of this form is necessary considering the information provided by the parties is used by the Board to structure a mediation process that will be productive to the parties and result in a settlement without resort to strike or lockout. The Board has been very successful in resolving labor disputes in the railroad and airline industries. Historically, some 97 percent of all NMB mediation cases have been successfully resolved without interruptions to public service. Since 1980, only slightly more than 1 percent of cases have involved a disruption of service. This success ratio would possibly be reduced if the Board was unable to collect the brief information that it does in the application for mediation services.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street, NW., Suite 250 E, Washington, DC 20005 or addressed to the e-mail address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via Internet address *king@nmb.gov*. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–25970 Filed 10–30–08; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of November 3, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of November 3, 2008

Thursday, November 6, 2008

1:25 p.m. Affirmation Session (Public Meeting) (Tentative), Entergy Nuclear Operations, Inc., Docket Nos. 50–247–LR and 50–286–LR, Appeal of Joint Petitioners Nancy Burton and CRORIP (Tentative).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 28, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–26134 Filed 10–29–08; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 24F–2, SEC File No. 270–399, OMB Control No. 3235–0456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires any open-end management companies (''mutual funds''), unit investment trusts (''UITs'') or face-amount certificate companies (collectively, ''funds'') deemed to have registered an indefinite amount of securities to file, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 5707 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be two hours. The total annual burden for all respondents to Form 24F–2 is estimated to be 11,414 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission requests written comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 22, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25864 Filed 10–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–PX, SEC File No. 270–524, OMB Control No. 3235–0582.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title of the collection of information is ''Form N–PX (17 CFR 274.129) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''), Annual Report of Proxy Voting Record.'' Rule 30b1–4 (17 CFR 270.30b1–4) under the Investment Company Act of 1940 requires every registered management investment company, other than a small business investment company (''Fund''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting record for the most recent twelve-month period ended June 30. Funds also use Form N–PX to inform the Commission that certain of their portfolios do not hold any equity

securities and have no proxy record to file.

The Commission requires the dissemination of this information in order to meet the filing and disclosure requirements of the Investment Company Act and to enable Funds to provide investors with the information necessary to evaluate an investment in the Fund. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information. Requiring a Fund to file its annual reports on Form N–PX has the advantages of making each Fund's proxy voting record available within a relatively short period of time after the proxy voting season, and of providing disclosure of all Funds' proxy voting records over a uniform period of time.

There are approximately 3,800 Funds registered with the Commission, representing approximately 9,400 Fund portfolios, which are required to file Form N–PX.[1] The 9,400 portfolios are comprised of 6,200 portfolios holding equity securities and 3,200 portfolios holding no equity securities. The staff estimates that portfolios holding no equity securities require approximately a 0.17 hour burden per response and those holding equity securities require 14.4 hours per response. The overall estimated annual burden is therefore 89,824 hours ((6,200 responses × 14.4 hours per response for equity holding portfolios) + (3,200 responses × 0.17 hours per response for non-equity holding portfolios)).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 22, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25865 Filed 10–30–08; 8:45 am]

BILLING CODE 8011–01–P

[1] The estimate of 3,800 Funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 5,700 Fund portfolios that invest primarily in equity securities, 500 ''hybrid'' or bond portfolios that may hold some equity securities, 2,400 bond Funds that hold no equity securities, and 800 money market Funds, for a total of 9,400 portfolios required to file Form N–PX.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28466; 812–13585]

Reserve Municipal Money-Market Trust, et al.; Notice of Application and Temporary Order

October 24, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application and a temporary order under Section 22(e)(3) of the Investment Company Act of 1940 (the ''Act'').

Summary of Application: Applicants request a temporary order to permit certain of their series to suspend the right of redemption of their outstanding redeemable securities and to postpone payment for shares which have been submitted for redemption for which payment has not been made.

Applicants: Reserve Municipal Money-Market Trust on behalf of two of its series, Arizona Municipal Money-Market Fund and Minnesota Municipal Money-Market Fund; Reserve Municipal Money-Market Trust II, on behalf of nine of its series, Interstate Tax-Exempt Fund, California Municipal Money-Market Fund, Connecticut Municipal Money-Market Fund, Florida Municipal Money-Market Fund, Michigan Municipal Money-Market Fund, New Jersey Municipal Money-Market Fund, Ohio Municipal Money-Market Fund, Pennsylvania Municipal Money-Market Fund and Virginia Municipal Money-Market Fund; Reserve New York Municipal Money-Market Trust on behalf of its single series, New York Municipal Money-Market Fund; and Reserve Short-Term Investment Trust on behalf of one of its series, Reserve Yield Plus Fund (Reserve Municipal Money-Market Trust, Reserve Municipal Money-Market Trust II, Reserve New York Municipal Money-Market Trust, and Reserve Short-Term Investment Trust, collectively, the ''Applicants'' or the ''Trusts,'' and each such series of Reserve Municipal Money-Market Trust, Reserve Municipal Money-Market Trust II and Reserve New York Municipal Money-Market Trust, a ''Money Market Fund'').

Filing Date: The application was filed on October 14, 2008 and amended on October 24, 2008.

Hearing or Notification of Hearing: Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 2008, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 1250 Broadway, New York, NY 10001–3701.

FOR FURTHER INFORMATION CONTACT: Brian P. Murphy, Senior Counsel, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. Each of the Money Market Funds and the Reserve Yield Plus Fund (collectively, the ''Funds'') is an open-end management investment company registered with the Commission under the Act. Each Money Market Fund is a money market fund that operates in a manner consistent with Rule 2a–7 under the Act and that seeks a high level of short-term interest income exempt from certain taxes as is consistent with the preservation of capital and liquidity. The Reserve Yield Plus Fund seeks as high a level of current income as is consistent with the preservation of capital and liquidity.

2. The Funds have been subject to a heavy level of redemption requests. For example, from September 12, 2008 to October 8, 2008, the total net assets of some of the Funds have declined as follows: (1) The Interstate Tax-Exempt Fund's total net assets declined from $1.78 billion to $154.6 million; (2) the Michigan Municipal Money-Market

Fund's total net assets declined from $29.1 million to $5.3 million; (3) the New Jersey Municipal Money-Market Fund's total net assets declined from $72.2 million to $20.9 million; (4) the Ohio Municipal Money-Market Fund's total net assets declined from $30.9 million to $5.6 million; (5) the Pennsylvania Municipal Money-Market Fund's total net assets declined from $74.4 million to $2.6 million; and (6) the New York Municipal Money-Market Fund's total net assets declined from $180.7 million to $91.8 million. The decline of each Fund's total net assets was largely caused by heavy redemption requests and not declining values associated with portfolio holdings. There has been no abatement of the redemptions, and there is no reasonable basis for believing that redemptions will abate.

3. The Funds' have made efforts to raise cash to satisfy redemptions from the Funds through the sale of certain short-term portfolio securities or maturation of other portfolio securities. The Funds are or soon will be limited in the amount of portfolio securities that can be sold at or above amortized cost or that will mature in seven days or less. The Funds' other portfolio securities can only be sold at below amortized cost (possibly at fire-sale prices) due to the extreme illiquidity and limited bids in the markets. In the view of the boards of trustees of each Trust, including a majority of the trustees who are not interested persons of such Trust within the meaning of Section 2(a)(19) of the Act, (the ''Boards''), and the investment adviser (the ''Adviser''), such sales would be inconsistent with the Funds' investment objectives of preservation of capital and harmful to non-redeeming shareholders.

4. In response to these developments, on October 8, 2008, the Boards, taking into account the recommendations of the Adviser, determined to liquidate the Funds.

5. On October 8, 2008, the Boards also determined that it would be in the best interest of each Fund's shareholders to suspend the right of redemption and postpone the date of payment or satisfaction upon redemption for more than seven days to allow Applicants the ability to liquidate the portfolio securities of the Funds in an orderly manner and allow the additional securities held by each Fund to mature. In addition, the Boards determined to request an order under Section 22(e)(3) of the Act.

Applicants' Legal Analysis

1. Section 22(e)(1) of the Act generally provides that a registered investment company may not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its designated agent except for any period during which the New York Stock Exchange (''NYSE'') is closed other than customary week-end and holiday closings, or during which trading on the NYSE is restricted.

2. Section 22(e)(2) of the Act provides that the seven-day redemption period does not apply for any period during which an emergency exists, as determined by Commission rules and regulations, as a result of which the disposal by a registered investment company of portfolio securities is not reasonably practicable or it is not reasonably practicable for the registered investment company fairly to determine the value of its net assets.

3. Section 22(e)(3) of the Act provides that redemptions may be suspended by a registered investment company for such other periods as the Commission may by order permit for the protection of security holders of the registered investment company.

4. Applicants submit that granting the requested relief is for the protection of each Fund's shareholders, as provided in Section 22(e)(3) of the Act. Applicants assert that, in requesting an order by the Commission, the Boards' goal is to ensure that each of the Funds' shareholders will be treated appropriately in view of the otherwise detrimental effect on each Fund of the recent unprecedented illiquidity of the markets and extraordinary levels of redemptions that the Funds have experienced. Current market conditions continue to be extraordinary, and the requested relief is intended to cause an orderly liquidation of each of the Funds' portfolio securities and ensure that all of their respective shareholders are protected in the process.

5. Applicants further submit that the relief is appropriate because: (1) The Boards: (a) Taking into account the recommendations of the Adviser, determined on October 8, 2008 to liquidate the Funds, (b) determined, on October 8, 2008, that a suspension of redemption is in the best interest of each Fund's shareholders, (c) determined, on October 8, 2008, that a postponement of payment for shares which have been submitted for redemption for which payment has not been made is in the best interest of each Fund's shareholders, and (d) promptly will create plans for the orderly liquidation of each Fund's assets and for the appropriate payments to each Fund's shareholders, including those whose redemption orders have been received but not yet paid, which plans will be subject to Commission supervision and which plans will include a planned schedule of possible payments to Fund shareholders that is based on the maturities of the portfolio securities held by each Fund; (2) each Fund has previously suspended sales as of September 18, 2008; (3) each Fund will make and keep appropriate records surrounding these events; and (4) each Fund continuously will provide timely and appropriate information, including initial and ongoing disclosure about the plan and its implementation, to its shareholders, via Web site or otherwise.

Commission Finding

Based on the representations in the application, including those relating to the current extraordinary market conditions and the Boards' October 8, 2008 determinations, the Commission permits the temporary suspension of the right of redemption and postponement of payment for shares which have been submitted for redemption for which payment has not been made by the Funds for the protection of the Funds' security holders. Under the circumstances described in the application, which require immediate action to protect the Funds' security holders, the Commission concludes that it is not practicable to give notice or an opportunity to request a hearing before issuing the order. In addition, under the circumstances described in the application, the Commission concludes that the order should be effective as of the date of the actions of the Boards.

It is ordered, pursuant to Section 22(e)(3) of the Act, that the requested relief from Section 22(e) of the Act is granted with respect to each Fund until that Fund has liquidated, or until the Commission rescinds the order granted herein. This order shall be in effect as of October 8, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25862 Filed 10–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58776; File No. SR–BATS–2008–007]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, Entitled ''Order Execution''

October 14, 2008.

Correction

In notice document E8–25388 beginning on page 63529 in the issue of Friday, October 24, 2008, make the following correction:

On page 63531, in the first column, in the last line from the bottom, ''November 13, 2008'' should read ''November 14, 2008''.

[FR Doc. Z8–25388 Filed 10–30–08; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58862; File No. SR–FINRA–2008–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Require Arbitrators To Provide an Explained Decision Upon the Joint Request of the Parties

October 27, 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 October 14, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA is proposing to amend NASD Rules 12214, 12514 and 12904 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and NASD Rules 13214, 13514 and 13904 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code,'' and together with the Customer Code, the ''Codes'') to require arbitrators to provide an explained decision upon the joint request of the parties. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Customer Code

12214. Payment of Arbitrators

(a)–(d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 12904(g) will receive an additional honorarium of $400. The panel will allocate the cost of the honorarium under Rule 12904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of $400.

* * * * *

12514. *Pre-hearing* Exchange of Documents and Witness Lists [Before Hearing]*, and Explained Decision Requests*

(a)–(c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 12904(g).

* * * * *

12904. Awards

(a)–(f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 12514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of $400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 12800 or to default cases conducted under Rule 12801.

(g)–(i) Renumbered as (h)–(j).

* * * * *

Industry Code

13214. Payment of Arbitrators

(a)–(d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 13904(g) will receive an additional honorarium of $400. The panel will allocate the cost of the honorarium under Rule 13904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of $400.

* * * * *

13514. *Pre-hearing* Exchange of Documents and Witness Lists [Before Hearing]*, and Explained Decision Requests*

(a)–(c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 13904(g).

* * * * *

13904. Awards

(a)–(f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 13514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of $400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 13800 or to default cases conducted under Rule 13801.

(g)–(i) Renumbered as (h)–(j).

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend its Customer Code and Industry Code to require arbitrators to provide an explained decision upon the joint request of the parties. The explained decision would be a fact-based award stating the general reason(s) for the arbitrators' decision; it would not be required to include legal authorities and/or damage calculations. Under the proposed rule change, parties would be required to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date.[3] The chairperson would: (1) Be required to write the explained decision; and (2) receive an additional honorarium of $400 for writing the decision. The panel would allocate the cost of the additional honorarium to the parties as part of the final award.

The arbitrators would not be required to provide an explained decision in cases resolved without a hearing under simplified arbitration Rules 12800 and 13800 or in default cases conducted under Rules 12801 and 13801.

FINRA is not proposing to amend Rules 12904(f) and 13904(f), which provide that an award may contain an underlying rationale. This means that arbitrators would continue to be permitted to decide, on their own, to write an explained decision. Thus, as is currently the case, if the panel decides on its own to write an explained decision, FINRA would not pay an additional honorarium to any panel member.

Background

The absence of explanations in awards is a common complaint of non-prevailing parties in the FINRA forum, especially customers and associated persons. In order to address these complaints and increase investor confidence in the fairness of the arbitration process, in March 2005, FINRA filed a proposed rule change with the SEC that would have required arbitrators to provide explained decisions upon the request of customers, or of associated persons in industry controversies. The SEC published the original proposed rule change for comment in July 2005.[4] The SEC received almost two hundred comment letters in response to the original proposed rule change, many of them critical.

While FINRA was considering its next steps, there have been several new developments related to explained decisions in other contexts. FINRA filed with the Commission dispositive motions[5] and expungement procedures[6] proposals, both of which would require arbitrators to write an explanation for granting relief. In addition, the Securities Industry Conference on Arbitration (SICA) conducted a ''Perceptions of Fairness'' arbitration survey of participants in securities arbitration proceedings.[7] The survey results, released in February 2008, indicate that 55.5% of customers who responded to the survey would be ''more satisfied if they had an explanation in the award.'' In light of the comments, and these recent developments, FINRA has withdrawn the original proposed rule change as filed in SR–NASD–2005–032 and is filing a new proposed rule change. Key provisions of the proposed rule change are discussed in more detail below, together with related comments from the original proposed rule change.

Parties Must Jointly Request an Explained Decision

The original proposed rule change would have permitted a customer, or an associated person in an intra-industry controversy, to require an explained decision. Many commenters objected to the one-sided nature of that provision. Under the new proposed rule change, all parties to a case would have to agree to an explained decision. While the arbitrators will be resolving the entire matter and the explained decision would normally address all the claims asserted by the parties, the parties may request that an explained decision address only certain claims. Requiring the parties' joint agreement to an explained decision is consistent with FINRA's general policy to accommodate a joint request of the parties.

Parties Must Submit Any Request for an Explained Decision 20 Days Before the First Scheduled Hearing Date

The proposed rule change would provide that parties must submit any joint request for an explained decision no later than 20 days prior to the first scheduled hearing date. This deadline coincides with the time that parties must exchange documents and identify witnesses they intend to present at the hearing. This approach would establish a clear deadline, give the parties sufficient time to request an explained decision, and provide notice to the arbitrators that an explained decision will be required before the hearing begins.

The Chairperson Must Write the Explained Decision

The new proposed rule change would require that the chairperson write the explained decision. The original proposed rule change contemplated that any of the arbitrators, or all of them, might draft the decision. Many commenters on the original proposed rule change were concerned that poorly written decisions might harm the public's perception of arbitration, or increase the likelihood of a party successfully vacating an award. To address these concerns, the rule would require that the chairperson write the decision.

Under the Codes, arbitrators must meet specific experience and training criteria to serve as chairpersons in arbitrations.[8] Therefore, chairpersons

[3] The term ''hearing'' means the hearing of an arbitration under Rules 12600 and 13600 (see Rules 12100(m) and 13100(m)).

[4] See Securities Exchange Act Release No. 52009 (July 11, 2005); 70 FR 41065 (July 15, 2005) (File No. SR–NASD–2005–032).

[5] FINRA filed the proposed dispositive motion rule on November 2, 2007 (SR–FINRA–2007–021). The proposal was published for comment on March 20, 2008 (see Securities Exchange Act Release No. 57497 (March 14, 2008); 73 FR 15019). FINRA submitted a Response to Comments on September 15, 2008.

[6] On March 13, 2008, FINRA filed an expungement procedures proposal (SR–FINRA–2008–010). This rule would establish procedures arbitrators must follow when considering requests for expungement relief under Conduct Rule 2130. The proposal was published for comment on April 3, 2008 (see Securities Exchange Act Release No. 57572 (March 27, 2008); 73 FR 18308). FINRA submitted a Response to Comments on June 11, 2008, and a Supplemental Response to Comments on September 3, 2008.

[7] Jill I. Gross and Barbara Black, Perceptions of Fairness of Securities Arbitration: An Empirical Study, (February 6, 2008). The report can be downloaded at *http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1477&context=lawfaculty*.

[8] Pursuant to Rules 12400 and 13400, arbitrators are eligible for the chairperson roster if they have completed FINRA chairperson training and:

• Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations

may be more experienced than non-chairpersons and should be better able to produce higher quality explained decisions. Further, assigning this responsibility to the chairperson would eliminate any confusion over who would be responsible for drafting the decision and would streamline the decision writing process. Having one arbitrator draft the decision after all the arbitrators have been consulted would reduce the time required to complete the decision. Once the decision was drafted, the arbitrators still would be required to sign the decision as provided in Rules 12904(a) and 13904(a).[9]

The Explained Decision Must Be Fact-Based

Under the proposed rule change, the explained decision would be a fact-based award stating the general reason(s) for the arbitrators' decision.[10] The award would not be required to include legal authorities and damage calculations. FINRA believes that requiring only fact-based reasons in explained decisions will reduce the potential for misstatements in an award, thereby decreasing the possibility of a subsequent vacatur, modification or remand of an award and ensuring the continued finality of a FINRA award. FINRA believes the proposed rule change would provide the parties with the information they want while simultaneously maintaining the expediency, flexibility, and finality of arbitration.

Only the Chairperson Will Be Compensated for an Explained Decision

The original proposed rule change did not address who would have been responsible for preparing the explained decision and provided that each arbitrator would be paid an additional $200 honorarium for cases in which an explained decision was required. Under the new proposed rule change, only the chairperson would write the decision, and only the chairperson would be paid an additional honorarium. The additional honorarium paid to the chairperson would reflect the increased effort involved in drafting an explained decision. Under the new proposed rule change, the panel may allocate the cost of the honorarium to one party, or may allocate it between or among all parties.[11]

Parties May Not Require Explained Decisions in Some Cases

Under the proposed rule change, parties would not be able to require explained decisions in two types of arbitration proceedings. The first is simplified arbitrations that are decided solely upon the pleadings and evidence filed by the parties, as described in Rules 12800 and 13800. The second is arbitrations that are conducted under the default procedures provided for in Rules 12801 and 13801. Explained decisions would not be appropriate in either of these situations because of the abbreviated nature of these arbitration proceedings.

Arbitrators May Choose To Write Explained Decisions in Other Circumstances

Under the proposed rule change, arbitrators would continue to be permitted to decide, on their own or upon the motion of one party, to write an explained decision. Arbitrators would not receive an additional honorarium if the panel issues an explained decision that is not required under the proposed rules. The proposed rule change would not affect the current rule that permits arbitrators to include a rationale in an award, even if the parties have not requested it, and would not encourage arbitrators to write an explained decision when they are not asked to do so by all the parties.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change would increase investor confidence in the fairness of the arbitration process by allowing parties jointly to require arbitrators to write an explained decision.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File

administered by a self-regulatory organization in which hearings were held; or

• Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

On June 23, 2008, the SEC approved a proposal to eliminate the Code provision allowing arbitrators to serve as Chairpersons provided they have ''substantially equivalent training or experience'' in lieu of completing FINRA Dispute Resolution's Chairperson training course (see Securities Exchange Act Release No. 58004 (June 23, 2008); 73 FR 36579 (June 27, 2008) (File No. SR–FINRA–2008–009). This rule became effective on September 22, 2008.

[9] Rules 12904(a) and 13904(a) require all awards to be in writing and signed by a majority of the arbitrators or as required by applicable law.

[10] While Rules 12604 and 13604 provide that the panel decides what evidence to admit and is not required to follow state or federal rules of evidence, FINRA intends that, as with current arbitration awards, explained decisions will have no precedential value in other cases. Thus, arbitrators will not be required to follow any findings or determinations that are set forth in prior explained decisions. In order to ensure that users of the forum are aware of the non-precedential nature of explained awards, FINRA plans to revise the template for all awards to include the following sentence: ''If the arbitrators have provided an explanation of their decision in this award, the explanation is for the information of the parties only and is not precedential in nature.''

[11] Under the Customer and Industry Codes, the panel has the authority to assess fees in connection with discovery-related motions, contested subpoena requests, and hearing session fees to one party, or may split the fees between or among all parties.

[12] 15 U.S.C. 78o–3(b)(6).

Number SR–FINRA–2008–051 on the subject line.

Paper Comments

• Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–051. 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 FINRA.

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–FINRA–2008–051 and should be submitted on or before November 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25976 Filed 10–30–08; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58850; File No. SR–NYSE–2008–107]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rule 17 To Rescind the Provisions of Paragraph (b) Governing Vendor Liability

October 24, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 20, 2008, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(6) thereunder,[5] 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 proposes to amend NYSE 17 to rescind the provisions of paragraph (b) governing vendor liability. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 17 to rescind the provisions of paragraph (b) governing vendor liability.

Current Vendor Liability Provisions

On July 10, 2008, the Exchange amended NYSE Rule 17 to provide, among other things, that its vendors and/or its subcontractors of electronic systems, services or facilities not be liable for any loss sustained by a member or member organization arising from use of the vendor and/or subcontractor systems, services or facilities.[6] The Rule further required members and member organizations to indemnify the Exchange and its vendors and/or subcontractors. It further set forth certain provisions that the Exchange may include in contracts connected to a member or member organization's use of any electronic systems, services or facilities provided by the Exchange.

Rescission of Vendor Liability Provisions

The Exchange adopted the vendor liability provisions of NYSE Rule 17 to address concerns about vendors being exposed to great risk of liability from exchange members when such vendors provide facilities and services directly to an exchange and not directly to actual users, *i.e.*, exchange members. The possibility of liability to end-users with whom vendors have no contractual relationship could result in vendors being unwilling to enter into agreement to provide their services to exchanges. In order for the Exchange to maintain its ability to deliver faster and more efficient trading tools to market participants, the Exchange adopted the vendor liability provisions of NYSE Rule 17 to address the risk of liability concerns.

In reviewing the current rule with NYSE constituency, it is clear that the NYSE must also consider the possible risk presented to members and member organizations with regard to requiring

[6] *See* Securities Exchange Release No. 58137 (July 10, 2008), 73 FR 41145 (July 17, 2008) (SR–NYSE–2008–55). The amendments to NYSE Rule 17 were based on American Stock Exchange (''Amex'') Rule 60 and were part of the process to reconcile the differences in NYSE and Amex rules. NYSE completed its acquisition of the Amex on October 1, 2008. *See* Securities Exchange Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–AMEX–2008–62 and SR–NYSE–2008–60).

members and member organizations to indemnify the Exchange vendors and its subcontractors. The Exchange therefore seeks to rescind the vendor liability provisions of NYSE 17, *i.e.*, paragraph (b) of the current rule, thereby reverting the rule to its original content prior to the effectiveness of SR–NYSE–55 [sic].[7] The Exchange will work with its constituency and vendors to create a proposed rule that addresses all of the aforementioned concerns at which time the Exchange will formally submit its proposal to the Commission pursuant to Section 19b of the Securities Exchange Act of 1934 (the ''Act'').

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is 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, and, in general, to protect investors and the public interest. The Exchange believes that the rescission of the liability provisions promotes just and equitable principles of trade and protects investors and the public interest because it removes potential risks to its members and member organizations until the Exchange can create a mechanism that adequately addresses issues of liability for all parties concerned.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received feedback from its constituents raising concerns about the possible risk presented to members and member organizations with regard to the provisions of NYSE Rule 17 that require members and member organizations to indemnify Exchange vendors and the subcontractors of vendors.

[7] The Exchange notes that a minor stylistic change that was part of this amendment is not being rescinded.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[10] and Rule 19b–4(f)(6) thereunder.[11] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day delayed operative date, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) thereunder.

The Exchange believes that good cause exists to justify waiver of the operative delay in order to immediately remove potential risks to its members and member organizations. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.[14]

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 Exchange Act.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2008–107 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2008–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–107 and should be submitted on or before November 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–25861 Filed 10–30–08; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service: Performance Review Board Members

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Members for the FY 08 Performance Review Board.

SUMMARY: Section 43 14(c)(4) of Title 5, U.S.C., requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY 08 Performance Review Board for the U.S. Small Business Administration:

1. Robert F. Danbeck, Chair, Associate Administrator for Management and Administration;
2. Bridget E. Bean, Deputy Associate Administrator for Field Operations;
3. Delorice Price Ford, Assistant Administrator for Hearings and Appeals;
4. Grady B. Hedgespeth, Director of Financial Assistance;
5. Judith A. Roussel, District Director, Illinois District Office;
6. C. Edward Rowe, III, Assistant Administrator for Congressional and Legislative Affairs; and
7. Sean G. Rushton, Assistant Administrator for Communication and Public Liaison.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–25814 Filed 10–30–08; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 6420]

Culturally Significant Objects Imported for Exhibition Determinations: ''Beyond Babylon: Art, Trade, and Diplomacy in the Second Millennium B.C.''

ACTION: Notice, Correction.

SUMMARY: On September 10, 2008, notice was published on page 52720 of the **Federal Register** (volume 73, number 176) of determinations made by the Department of State pertaining to the exhibit, ''Beyond Babylon: Art, Trade, and Diplomacy in the Second Millennium B.C.'' The referenced notice is corrected as to additional objects to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the additional objects to be included in the exhibition ''Beyond Babylon: Art, Trade, and Diplomacy in the Second Millennium B.C.'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about November 18, 2008, until on or about March 15, 2009; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 23, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–26071 Filed 10–30–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6419]

Culturally Significant Objects Imported for Exhibition Determinations: ''Looking In: Robert Frank's 'The Americans' ''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Looking In: Robert Frank's 'The Americans','' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about January 18, 2009, until on or about April 26, 2009; at the San Francisco Museum of Modern Art, San Francisco, CA, from on or about May 17, 2009, to on or about August 23, 2009; at the Metropolitan Museum of Art, New York, NY, from on or about September 22, 2009, to on or about December 27, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 23, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–26072 Filed 10–30–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6375]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 19, 2008, at the U.S. Department of State, Washington, DC Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4) and 5 U.S.C. 552b(c)(7)(E), it

[15] 17 CFR 200.30–3(a)(12).

has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and commercial or financial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

FOR FURTHER INFORMATION CONTACT: For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Gregory B. Starr,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E8–26066 Filed 10–30–08; 8:45 am]

BILLING CODE 4710–43–P

TENNESSEE VALLEY AUTHORITY

Meeting No. 08–05

Time and Date: 10 a.m. CDT, October 30, 2008, The Scarritt-Bennett Center, Laskey Building, 1st Floor, 1008 19th Avenue South, Nashville, Tennessee.

Agenda

Old Business

Approval of minutes of August 20, 2008, Board meeting.

New Business

1. Chairman's Report
2. President's Report
3. Report of the Finance, Strategy, Rates, and Administration Committee

A. Customer issues

i. Two-Part Real Time Pricing

B. Tax-equivalent payments for Fiscal Year 2008 and estimated Payments for Fiscal Year 2009

C. Fiscal Year 2008 Winning Performance Scorecard review

D. Winning Performance measures and balanced scorecard for Fiscal Year 2009

E. TVARS lump-sum approval and delegation

F. Management Compensation for Fiscal Year 2009

4. Report of the Operations, Environment, and Safety Committee

A. Contract for greater than 100 MW of Firm Demand

B. TVA Principle and Board Practice—Commitment to Nuclear Safety

5. Report of the Audit, Governance, and Ethics Committee

6. Report of the Community Relations and Energy Efficiency Committee

A. Regional Resource Stewardship Council charter renewal

B. Valley Investment Initiative

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: October 23, 2008.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E8–25776 Filed 10–30–08; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

[Docket Number: OST–95–950]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received on or before December 30, 2008.

ADDRESSES: You may submit a comment (identified by DOT Docket Number OST–95–950) by any of the following methods:

- *Web site: http://regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal Holidays.

Instructions: All comments must include the agency name and Docket Number OST–95–950. Note that all comments received will be posted without change to *http://regulations.gov*, including name and personal information provided. You should know that anyone is able to search the electronic from of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments, go to *http://regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Wednesday and federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket OST–95–950''. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

FOR FURTHER INFORMATION CONTACT: Aleta Best, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 493–0797.

SUPPLEMENTARY INFORMATION:

Title: Passenger Manifest Information.

OMB Control Number: 2105–0534.

Expiration Date: March 31, 2009.

Type of Request: Extension of a previously approved collection.

Abstract: Public Law 101–604 (entitled the Aviation Security Improvement Act of 1990, or ''ASIA 90'', and later codified as 49 U.S.C. 44909) requires that certificated air carriers and large foreign air carriers collect the full name of each U.S. citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain circumstances, to the National

Transportation Safety Board. Each carrier has developed its own collection system. The Passenger Manifest Information, Final Rule (14 CRF 243) was published in the **Federal Register**, Vol.63, No.32 (February 18, 1998). The rule was effective March 20, 1998.

Respondents: All U.S. air carriers, foreign air carriers, and travel agents doing business in the United States, and the traveling public.

Estimated Total Annual Burden: Annual reporting burden for this data collection is estimated at 259,000 hours for all travel agents and airline ticket agents and 259,000 hours for air travelers, based on 45 seconds for non-frequent fliers and 15 seconds for frequent fliers, for the approximately 33% of international itineraries that involve personal contact. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Estimated Number of Respondents: 16,000, excluding air travelers.

Estimated Time per Response: At 45 seconds for non-frequent fliers and 15 seconds for frequent fliers, for the approximately 33% of international itineraries that involve personal contact.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed 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 the respondents, including through the use of automated techniques or other forms of information technology.

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.

Issued in Washington, DC.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. E8–25988 Filed 10–28–08; 11:15 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 19, 2008, vol. 73, no. 119, page 34976. The information is required to carry out FAA missions related to the aviation industry, flight planning, and airport engineering.

DATES: Please submit comments by December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Airport Master Record.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0015.

Form(s): 5010–1, 5010–2, 5010–3, 5010–5.

Affected Public: An estimated 19,800 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 27 minutes per response.

Estimated Annual Burden Hours: An estimated 8,870 hours annually.

Abstract: 49 U.S.C. 329(b) directs the Secretary of Transportation to collect information about civil aeronautics. The information is required to carry out FAA missions related to the aviation industry, flight planning, and airport engineering. The database is the basic source of data for private, state, and Federal government aeronautical charts and publications.

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 Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25942 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Final Rule Certification of Repair Stations, Part 145 of Title 14, CFR

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 current information collection. Certain organizations may apply to perform certification functions on behalf of the FAA. Information is collected from applicants who wish to obtain repair station certification.

DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Final Rule Certification of Repair Stations, Part 145 of Title 14, CFR.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0682.

Form(s): FAA Form 8310–3.

Affected Public: A total of 4,503 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 219.7 hours per response.

Estimated Annual Burden Hours: An estimated 2,954,227 hours annually.

Abstract: Information is collected from applicants who wish to obtain repair station certification. Applicants must submit FAA form 8310–3 to the appropriate FAA flight standards district office for review.

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25943 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 19, 2008, vol. 73, no. 119, page 34975. This information is used by FAA for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

DATES: Please submit comments by December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: General Aviation and Air Taxi Activity and Avionics Survey.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0060.

Form(s): 1800–54.

Affected Public: An estimated 39,000 Respondents.

Frequency: This information is collected annually.

Estimated Average Burden per Response: Approximately 20 minutes per response.

Estimated Annual Burden Hours: An estimated 13,000 hours annually.

Abstract: Respondents to this survey are owners of general aviation aircraft. This information is used by FAA for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

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 Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25944 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Exemptions for Air Taxi and Commuter Air Carrier Operations

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 current information collection. 14 CFR Part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators.

DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Exemptions for Air Taxi and Commuter Air Carrier Operations.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0633.

Form(s): OST Form 4507.

Affected Public: A total of 2,040 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 1,026 hours annually.

Abstract: 14 CFR Part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators.

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25945 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Aviation Medical Examiner Program

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 current information collection. This collection is necessary in order to determine applicants' qualifications for certification as an Aviation Medical Examiner (AME).

DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA)

Title: Aviation Medical Examiner Program.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0604.

Form(s): FAA Form 8520–2.

Affected Public: A total of 450 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 225 hours annually.

Abstract: This collection is necessary in order to determine applicants' qualifications for certification as an Aviation Medical Examiner (AME).

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25946 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Operating Requirements: Domestic, Flag, and Supplemental Operations

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 current information collection. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and the applicant's eligibility for air operations certification.

DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Operating Requirements: Domestic, Flag, and Supplemental Operations.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0008.

Form(s): FAA Form 8070–1.

Affected Public: A total of 100 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 14.63 hours per response.

Estimated Annual Burden Hours: An estimated 1,298,589 hours annually.

Abstract: 14 CFR Part 121 prescribes the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and the applicant's eligibility for air operations certification.

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25947 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Procedures for Non-Federal Navigation Facilities

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 current information collection. The information kept is used by the FAA as proof that non-Federal navigation facilities are maintained within certain specified tolerances.

DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Procedures for Non-Federal Navigation Facilities.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0014.

Form(s): FAA Forms 6030–1, 6030–17, 6790–4, 6790–5.

Affected Public: A total of 2,413 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 13.72 hours per response.

Estimated Annual Burden Hours: An estimated 33,116 hours annually.

Abstract: The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended remote sites or airport terminals. The information kept is used by the FAA as proof that the facility is maintained within certain specified tolerances.

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 October 24, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–25948 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; ACSEP Evaluation Customer Feedback Report

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 current information collection. Certain organizations may apply to perform certification functions on behalf of the FAA. The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP).

DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: ACSEP Evaluation Customer Feedback Report.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0605.

Form(s): Form 8100–7.

Affected Public: A total of 200 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP).

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 October 27, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–26040 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures

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 current information collection. Certain organizations may apply to perform certification functions on behalf of the FAA. The requested information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, to identify persons possibly unsuitable for pilot certification. DATES: Please submit comments by December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at (202) 267–9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0543.

Form(s): There are no FAA Forms associated with this collection.

Affected Public: A total of 970 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 162 hours annually.

Abstract: The requested information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, to identify persons possibly unsuitable for pilot certification.

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 October 27, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–26041 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Providence-T.F. Green Airport, Warwick, RI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Providence-T.F. Green Airport, as submitted by the Rhode Island Airport Corporation (RIAC) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure map is October 8, 2008.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Providence-T.F. Green Airport is in compliance with applicable requirements of Part 150, effective October 8, 2008.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by RIAC on September 5, 2008. The specific map under consideration is ''Figure 0.0–0, Airport Improvement Program EIS, 2020, No-Action Day-Night Noise Level (DNL) Contours.'' The FAA has determined that this map for Providence-T.F. Green Airport is in compliance with applicable requirements. This determination is effective on October 8, 2008.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations: Providence-T.F. Green Airport, 2000 Post Road, Warwick, RI 02886–1533; Federal Aviation Administration, New England Region, Airports Division, ANE–600, 16 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts on October 8, 2008.

LaVerne F. Reid,

Manager, Airports Division.

[FR Doc. E8–25705 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notification of Policy Revisions and Requests for Comments on the Percentage of Fabrication and Assembly that Must be Completed by an Amateur Builder To Obtain an Experimental Airworthiness Certificate for an Amateur-Built Aircraft; Extension of Comment Period

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

ACTION: Notice; extension of comment period.

SUMMARY: This notice announces a second extension of the comment period for the proposed revisions to Chapter 4, Special Airworthiness Certification, Section 9 of the FAA Order 8130.2F, *Airworthiness Certification of Aircraft and Related Products*, and Advisory Circular (AC) 20–27G, *Certification and Operation of Amateur-Built Aircraft*. These and other related documents are located on the FAA main Web page. The Web link is: *http://www.faa.gov/aircraft/draft_docs/display_docs/index.cfm?Doc_Type=Pubs*.

DATES: Please submit your comments on or before December 15, 2008.

ADDRESSES: You may submit your comments via e-mail to *miguel.vasconcelos@faa.gov*, via fax to (202) 267–8850 (ATTN: Miguel Vasconcelos, AIR–230), via mail or hand delivery to: Production and Airworthiness Division (AIR–200), Federal Aviation Administration (Room 815), 800 Independence Ave., SW., Washington, DC 20591, ATTN: Miguel Vasconcelos.

FOR FURTHER INFORMATION CONTACT: Frank Paskiewicz, Manager, Production and Airworthiness Division, AIR–200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone number: (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2008 (73 FR 40652), the FAA published a notice requesting comments on proposed changes to FAA Order 8130.2F and Advisory Circular (AC) 20–27G, as well as comments on the percentage of fabrication and assembly that must be completed by an amateur builder to obtain an experimental airworthiness certificate for an amateur-built aircraft; The comment close date of August 15, 2008 was not specifically posted in that notice and was only available on the FAA website, also commenters requested more review time. As a result, the FAA decided to extend the comment period by 45 days to September 30, 2008. However, the reference materials (Order and AC) may have been inadvertently removed from the FAA's Web site for several days during the full 45 day comment period (August 15 until September 30). Therefore, the FAA has decided to reopen the comment period for an additional 45 days. This extension will allow the public to participate in the process and provide the FAA with more in-depth comments on the proposed changes.

Issued in Washington, DC on October 28, 2008.

Frank Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. E8–26021 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–P

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 vacant, much of which is farmed or vacant land, containing trees, streams, and scattered wetland areas owned by the City of Mansfield. The Miller Farm Parcel #50 is approximately 100.521 acres. The land was acquired under FAA Project No(s) AIP–90–2–3–39–0049 0991 (Contract No. AIP FA91–GL–l806). There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land for release is vacant, not required for future development, safety, or compatible land use. The intended land use is infrastructure development, including roads, utilities, and industrial development. 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 December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie Swarm, 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 the property located in Franklin Township, County of Richland, State of Ohio, and described as follows:

(Legal Description of Property).

Being a part of the southwest quarter of section 33, township 22, range 18 and being more particularly described as follows:

Beginning at the base of an 8″ wood fence post found at the northeast corner of said southwest quarter, referenced by a 5/8″ rebar found bearing N 89° − 12′ − 33″ E, 0.79 feet;

Thence with the following eight courses:

S 00° − 08′ − 51″ E, 508.28 feet along the east line of said southwest quarter to a 5/8 inch rebar found at the northeast corner of a conveyed to Charles R. and Dorothy A. Miller, Trustees by official record volume 177, page 252;

N 84° − 13′ − 51″ W, 148.00 feet along the northerly line of said land of Charles R. and Dorothy A. Miller to a 5/8 inch rebar found in the northwest corner of said land.

S 00° − 08′ − 51″ E, 296.00 feet along the west line of said land of Charles R. and Dorothy A. Miller to a 5/8 inch rebar with plastic cap stamped ''Richland Eng. RLS 7209″ in the southwest corner of said land.

S 89° − 12′ − 33″ W, 1,244.71 feet to an iron pin set; S 00° − 08′ − 51″ E, 1,825.57 feet to an iron pin set; S 89° − 28′ − 00″ W, 1,262.88 feet to an iron set in the west line of said southwest quarter;

N 00° − 38′ − 10″ W, 2,607.11 feet along said west line of said southwest quarter to a inch water pipe found in the northwest corner of said southwest

quarter and passing through an iron pin found at 21.04 feet;

Thence, N 89° – 12′ – 33″ E, 2,677.09 along the north line of said southwest quarter to the place of beginning, containing 100.521 acres, more or less of which 1,689 acres are in the southwest quarter of section 33, Franklin Township and 96.832 acres are in the City of Mansfield and subject to all legal highways and easements of record.

Bearings: Survey X–230.

According to a survey made in September 2007 by Roger L. Stevens, Ohio Registered surveyor NO: 7052.

All iron pins set are 5/8 inch diameter rod with plastic cap stamped ''S.J.L. INC.''

Issued in Romulus, Michigan on September 22, 2008.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–26038 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: December 4, 2008, 12 noon to 3 p.m., Eastern Standard Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in this meeting by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement; and, to that end, it may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Plan Board of Directors at (505) 827–4565.

Dated: October 27, 2008.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. E8–26135 Filed 10–29–08; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0312]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From DriveCam, Inc

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for an exemption from DriveCam, Inc. (DriveCam) to allow the placement of video event recorders at the top of the windshields on commercial motor vehicles (CMVs). The exemption would enable any motor carrier using DriveCam devices to mount the recorders lower in the windshield that is lower than what is currently permitted by the Agency's regulations in order to obtain the most effective view of the driver, passengers or outside area to maximize the ability to improve driver behavior and understand the root causes of collisions. Motor carriers would use the video event recorders to increase safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior; and (3) enhanced collision review and analysis. DriveCam believes this mounting position would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: Comments must be received on or before December 1, 2008.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2008–0312 by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov*.

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption

request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption (49 CFR 381.315(c)). The exemption may be renewed (49 CFR 381.300(b)).

DriveCam's Application for Exemption

On April 14, 2008, DriveCam applied for an exemption from 49 CFR 393.60(e)(1) to allow the installation of video event recorders on all CMVs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (devices) must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

DriveCam believes that the current restrictions on the location of devices mounted in the windshield area significantly degrade the ability of video event recorders to capture the proper viewing area in CMVs. DriveCam states that manufacturers have voluntarily installed larger windshield wipers on the windshields of CMVs that increase the swept area beyond that which is minimally required by Federal Motor Vehicle Safety Standard (FMVSS) No. 104, ''Windshield wiping and washing systems.'' FMVSS No. 104 establishes the requirements applicable to vehicle and equipment manufacturers for windshield wiper system coverage for passenger cars, multi-purpose passenger vehicles, trucks and buses.

DriveCam believes that video event recorders, for optimal effectiveness, should be mounted on the vehicle windshield on the interior of the vehicle in a position that enables the video-capture of what is happening in front of the vehicle as well as an internal video-capture of the driver. The view of what is happening in front of the vehicle requires that the forward lens of the recorder be in the swept area of the windshield for a clear view in inclement weather. DriveCam states:

> ''Section 393.60(e)(1) was designed to avoid placement of devices on the windshield that would obstruct a driver's useful view of the roadway. However, because of the increase of the size * * * of the area swept by the windshield wipers, video event recorders now must be mounted so high on the window as to limit the view of drivers, passengers, and collision events. Thus, the level of safety that can be produced by use of video event recorders is limited by the current regulation. By comparison, the proposed alternative will enable commercial vehicle operators to lower the placement of the video event recorders to a level, which will maximize the external and internal views of the recorders while still having them mounted high enough so as not to limit the field of vision of the driver.''

DriveCam notes in its exemption application that the Commercial Vehicle Safety Alliance (CVSA) submitted a petition for rulemaking to FMCSA on October 18, 2007, to amend 49 CFR 393.60(e). The CVSA petition requests that the FMCSRs be amended to permit video event recorders and similar devices that require a clear forward facing visual field to be mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, provided that they are located outside the driver's sight lines to the road and highway signs and signals. In its exemption application, DriveCam proposes to comply with the language proposed by CVSA in the October 2007 petition during the period of the exemption if it is granted. A copy of the CVSA petition has been placed in the docket referenced at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on DriveCam's application for an exemption from 49 CFR 393.60(e)(1). Please note that this application is very similar to one filed by Greyhound Lines Inc., and published in the **Federal Register** on August 11, 2008 [73 FR 46704]. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** caption of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: October 24, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–26060 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7165; FMCSA–04–17984; FMCSA–05–23238; FMCSA–06–24783]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on October 9, 2008.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for Robert L. Aurandt, Donald Bostic, Jr., Harry R. Brewer, Clarence N. Florey, Jr., Joseph H. Fowler, Donald R. Hiltz, Kelly R. Konesky, Gregory T. Lingard, Hollis J. Martin, Kevin C. Palmer, Charles O. Rhodes, Gordon G. Roth, and Daniel A. Sohn.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: October 21, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–26059 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2009 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Pursuant to 49 U.S.C. 5323(n), FTA is authorized to consolidate the certifications and assurances required by Federal law or regulations for its programs into a single document. FTA is also required by 49 U.S.C. 5323(n) to publish a list of those certifications and assurances annually.

Appendix A of this Notice contains the comprehensive compilation of FTA's Certifications and Assurances for Federal Fiscal Year (Federal FY) 2009 applicable to the various Federal assistance programs that FTA will administer during that Federal FY. FTA's Certifications and Assurances for Federal FY 2009 reflect Federal statutory, regulatory, and programmatic changes that have now become effective.

DATES: *Effective Date:* These FTA Certifications and Assurances are effective on October 1, 2008, the first day of Federal FY 2009.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate FTA Regional Office or FTA Metropolitan Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact FTA's Office of Administration at 202–366–4022.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Telephone # 617–494–2055.

Region 2: New York

States served: New York and New Jersey. Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Telephone # 215–656–7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the U.S. Virgin Islands. Telephone # 404–865–5600.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Telephone # 817–978–0550.

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska. Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Telephone # 720–963–3300.

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada, Guam, American Samoa, and the Northern Mariana Islands. Telephone # 415–744–3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington. Telephone # 206–220–7954.

Lower Manhattan Recovery Office

Area served: Lower Manhattan. Telephone # 212–668–1770.

New York Metropolitan Office

Area served: New York Metropolitan Area. Telephone # 212–668–2201.

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area. Telephone # 215–656–7070.

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area. Telephone # 202–219–3562/219–3565.

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area. Telephone # 312–886–1616.

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area. Telephone # 213–202–3950.

SUPPLEMENTARY INFORMATION:

1. Purposes

The purposes of this Notice are to:

- Publish FTA's Federal FY 2009 Certifications and Assurances for Applicants for Federal assistance administered by FTA and the Projects for which they seek Federal assistance.
- Highlight new changes to the FTA Certifications and Assurances now in effect.
- Identify locations where these FTA Certifications and Assurances may be viewed, and
- Provide directions for submitting these FTA Certifications and Assurances.

2. Background

a. FTA's Responsibilities. Since Federal FY 1995, FTA has been

consolidating the various certifications and assurances that may be required of its Applicants and their projects into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, when feasible in conjunction with its publication of the FTA annual apportionment notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act. Because U.S. DOT's full-year appropriations for Federal FY 2009 were not signed into law on October 1, 2008 (the first day of Federal FY 2009), and have not yet been signed into law, FTA is proceeding with publication of its Certifications and Assurances for FY 2009.

b. Applicant's Responsibilities. Irrespective of whether a project will be financed under the authority of 49 U.S.C. chapter 53, Title 23, United States Code, or another Federal statute, the Applicant must submit Federal FY 2009 Certifications and Assurances to FTA applicable to all projects for which the Applicant seeks funding during Federal FY 2009.

FTA requests that an Applicant to submit all of the twenty-four (24) categories of the Certifications and Assurances that may be needed for all projects for which the Applicant intends to or might seek Federal assistance in the Federal FY 2009. Selecting and submitting these Certifications and Assurances to FTA signifies the Applicant's intent and ability to comply with all applicable provisions thereof.

In order to assure FTA that the Applicant is authorized under State and local law to certify compliance with the FTA Certifications and Assurances it has selected, FTA requires the Applicant to obtain a current (Federal FY 2009) affirmation signed by the Applicant's attorney affirming the Applicant's legal authority to certify its compliance with the FTA Certifications and Assurances that the Applicant has selected. The Applicant's attorney must sign this affirmation during Federal FY 2009. Irrespective of whether the Applicant makes a single selection of all twenty-four (24) categories of FTA Certifications and Assurances or selects individual categories from the FTA Certifications and Assurances, the Affirmation of Applicant's Attorney from a previous Federal FY is not acceptable, unless FTA expressly determines otherwise in writing.

c. Effect of Subrecipient Participation. Absent a written determination by FTA to the contrary, the Applicant itself is ultimately responsible for compliance with the FTA Certifications and Assurances it has selected even though the Project may be carried out in whole or in part by one or more subrecipients. Thus, if subrecipients will be participating in the Project, when the Applicant submits its FTA Certifications and Assurances, the Applicant is also signifying that it will be responsible for compliance, both of itself and of each of its subrecipients, with the provisions of the FTA Certifications and Assurances it has selected. Therefore, in providing Certifications and Assurances that necessarily involve the compliance of any prospective subrecipient, FTA strongly recommends that the Applicant take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient participating in the project, to assure the validity of the Applicant's Certifications and Assurances to FTA.

3. Significant Information About FTA's Certifications and Assurances for Federal FY 2009

a. Legal Implications

(1) Binding Commitments. Because the Applicant is required by Federal law and regulations to comply with the applicable provisions of all FTA Certifications and Assurances it submits, it is important that the Applicant be familiar with the provisions of all twenty-four (24) categories of FTA Certifications and Assurances for Federal FY 2009. The text of those Certifications and Assurances is contained in Appendix A of this Notice, and also appears at *http://www.fta.dot.gov/documents/2009-Certs-Appendix.A.pdf*, and in FTA's electronic award and management system, TEAM-Web, *http://ftateamweb.fta.dot.gov*, at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page in the ''Recipients'' option. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of FTA's annual Certifications and Assurances. The Certifications and Assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal FY 2009.

An Applicant's annual Certifications and Assurances to FTA generally remain in effect for either the duration of the Grant or Cooperative Agreement supporting the Project until the Project is closed out or for the duration of the Project or Project property when a useful life or industry standard is in effect, whichever occurs later. If, however, the Applicant provides Certifications and Assurances to FTA in a later year that differ from the Certifications and Assurances previously provided, the later Certifications and Assurances will apply to the Grant, Cooperative Agreement, Project, or Project property, except to the extent FTA permits otherwise in writing.

(2) Penalties for Noncompliance. If the Applicant makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal government reserves the right to impose on the Applicant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, ''Program Fraud Civil Remedies,'' 49 CFR part 31, or the penalties of 49 U.S.C. 5323(l) invoking the criminal provisions of 18 U.S.C. 1001, or other applicable Federal law to the extent the Federal government deems appropriate.

(3) FTA's Certifications and Assurances Constitute Only a Partial List of Federal Requirements. FTA cautions that the FTA Certifications and Assurances required by Federal law and regulations do not address all the Federal requirements that will apply to the Applicant and its Project. FTA's Certifications and Assurances are generally pre-award requirements, *i.e.*, those requirements of Federal law and regulations the Applicant must fulfill before FTA is legally authorized to award of Federal financial assistance to an Applicant.

(4) *Other Federal Requirements.* Because FTA's Certifications and Assurances do not encompass all Federal requirements that will apply to the Applicant and its Project, FTA strongly encourages the Applicant to review the Federal authorizing legislation, regulations, and directives pertaining to the program or programs for which the Applicant seeks Federal assistance. The FTA Master Agreement for Federal FY 2009 at *http://www.fta.dot.gov/documents/15-Master.pdf* identifies a substantial number of those Federal laws, regulations, and directives that apply to Applicants and their various projects.

b. Importance of FTA's Certifications and Assurances for Federal FY 2009. Following publication of these Certifications and Assurances, FTA may not award Federal financial assistance through a Federal Grant or Cooperative Agreement until the Applicant submits

all of the FTA Certifications and Assurances for Federal FY 2009 pertaining to itself and its project as required by Federal laws and regulations. The Applicant's Certifications and Assurances for Federal FY 2009 will be applicable to all projects for which it seeks Federal assistance during Federal FY 2009 and through the next Federal FY until FTA issues its annual Certifications and Assurances for Federal FY 2010.

c. Federal FY 2009 Changes. Apart from minor editorial revisions, significant changes to FTA's Certifications and Assurances include the following:

(1) In the Introductory paragraphs preceding the text of FTA's Certifications and Assurances:

(a) The FTA Web site for the FTA Master Agreement for Federal FY 2009 is identified as *http://www.fta.dot.gov/documents/15-Master.pdf.*

(b) A new provision has been added expressly reminding the Applicant that when it applies for FTA assistance on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances the Applicant selects pertaining to any FTA assisted project.

(2) Category 09. The Charter Service Agreement has been amended for consistency with the new FTA regulations, ''Charter Service,'' published at 73 FR 2325 *et seq.*, January 14, 2008, and amended at 73 FR 44927 *et seq.*, August 1, 2008, and 73 FR 46554 *et seq.*, August 11, 2008.

(3) Categories 13 and 21. Subsection 201(i) of the SAFETEA–LU Technical Corrections Act, 2008, Pub. L. 110–244, June 6, 2008, changed the name of the ''Alternative Transportation in Parks and Public Lands Program'' to the ''Paul S. Sarbanes Transit in Parks Program.'' References to that program have been amended to reflect the new name change.

d. When to Submit. All Applicants for FTA formula program or capital program assistance, and current FTA Grantees with an active project financed with FTA formula program or capital program assistance, are expected to provide their FTA Certifications and Assurances for Federal FY 2009 within 90 days from the date of this publication or as soon as feasible after their first application for Federal assistance authorized or made available for Federal FY 2009, whichever is earlier. In addition, FTA encourages Applicants seeking Federal assistance for other projects to submit their FTA Certifications and Assurances to FTA as soon as possible to expedite awards of FTA assistance.

4. Ways to Submit FTA's Certifcations and Assurances

As further explained, FTA will accept an Applicant's Certifications and Assurances submitted either in TEAM–Web at *http://ftateamweb.fta.dot.gov*, or on paper containing the text set forth on the Signature Page(s) of Appendix A of this Notice. In order of preference, FTA permits:

a. Electronic Submission in TEAM–Web. An Applicant registered in TEAM–Web must submit its FTA Certifications and Assurances, as well as its applications for Federal assistance in TEAM–Web. FTA prefers that other Applicants for Federal assistance submit their FTA Certifications and Assurances through TEAM–Web.

The TEAM–Web ''Recipients'' option at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page contains fields for selecting among the twenty-four (24) categories of FTA Certifications and Assurances to be submitted. There is also a field for entering a single selection covering all twenty-four (24) categories of FTA Certifications and Assurances.

Within the ''Cert's & Assurances'' tab is a field for the Applicant's authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant's electronic signature for the FTA Certifications and Assurances selected. In addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the FTA Certifications and Assurances the Applicant has selected. The Applicant's authorized representative may enter his or her PIN in lieu of the attorney's PIN, provided that the Applicant has a current Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney in Federal FY 2009.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice or the TEAM–Web Helpdesk.

b. Paper Submission. Only if the Applicant is unable to submit its FTA Certifications and Assurances in TEAM–Web may the Applicant submit its FTA Certifications and Assurances on paper.

If an Applicant is unable to submit its FTA Certifications and Assurances electronically, it must mark the categories of FTA Certifications and Assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit them to FTA. The Applicant may signify compliance with all categories by placing a single mark in the appropriate space or select the categories applicable to itself and its projects.

The Applicant must enter its signature on the Signature Page(s) and must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity to make and comply with the Certifications and Assurances the Applicant has selected. The Applicant may enter its signature in lieu of its attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney and dated in Federal FY 2009.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice.

Authority. 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as amended by the SAFETEA–LU Technical Corrections Act, 2008, Pub. L. 110–244, June 6, 2008; Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

Issued in Washington, DC, this 27th day of October 2008.

James S. Simpson,

Administrator.

Federal Fiscal Year 2009 Certifications and Assurances for Federal Transit Administration Assistance Programs

Preface

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2009. Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of $100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. An Applicant may select a single certification that will cover all the programs for which it anticipates submitting an application. FTA requests the Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for

which it expects to seek Federal assistance.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special preaward requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(15) for Federal Fiscal Year 2009 at the FTA Web site *http://www.fta.dot.gov/documents/15-Master.pdf.* The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to assure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the applicable Master Agreement for its project, if applicable, incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project irrespective of participation in the project by any subrecipient. The Applicant understands and agrees that when it applies for FTA assistance on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances the Applicant selects.

FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic award and management system, at *http://ftateamweb.fta.dot.gov.* Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients.'' Should the Applicant choose not to submit its certifications and assurances through TEAM-Web, the Applicant may submit its certifications and assurances on paper by submitting the Signature Page(s) at the end of this document, indicating the certifications and assurances it is making on one side of the document or on one page, and signing its affirmation and that of its attorney on the other side or other page.

01. Assurances Required for Each Applicant

Each Applicant for FTA assistance must provide all assurances in this Category ''01.'' Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category ''01.''

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement with FTA issued for its project. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property,

whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions.

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act, U.S. DOT implementing regulations, and this assurance.

(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF–424B and SF–424D, the Applicant assures that, with respect to itself or its project, the Applicant:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.*, relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable

State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland ''Anti-Kickback'' Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j–6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with

Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' Revised, and the most recent applicable OMB A–133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

02. Lobbying Certification

An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding $100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding $100,000 until the Applicant provides this certification by selecting Category ''02.''

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans, and cooperative agreements).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

03. Procurement Compliance

In accordance with *49 CFR 18.36(g)(3)(ii)*, each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category ''03.'' FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system fail to comply with Federal laws or regulations in accordance with applicable Federal directives.

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has expressly approved otherwise in writing.

04. Protections for Private Transportation Providers

Each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category ''04.''

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;

B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and

C. Paid just compensation under State or local law to the company for any franchise or property acquired.

05. Public Hearing

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not

award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category ''05.''

As required by 49 U.S.C. 5323(b), for a proposed capital project that will substantially affect a community, or the public transportation service of a community, the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for public review and comment on the proposed project;

B. After providing notice, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served, held a public hearing on the project if the project affects significant economic, social, or environmental interests;

C. Considered the economic, social, and environmental effects of the proposed project; and

D. Determined that the proposed project is consistent with official plans for developing the community.

06. Acquisition of Rolling Stock for Use in Revenue Service

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock for use in revenue service is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category ''06.''

As required by 49 U.S.C. 5323(m) and implementing FTA regulations, ''Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,'' 49 CFR part 663, at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA–LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite preaward and post delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

07. Acquisition of Capital Assets by Lease

An Applicant that intends to request the use of Federal assistance authorized under 49 U.S.C. chapter 53 to acquire capital assets by lease is required to provide the following certifications. FTA may not provide Federal assistance to support those costs until the Applicant provides this certification by selecting Category ''07.''

As required by FTA regulations, ''Capital Leases,'' 49 CFR part 639, at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized under 49 U.S.C. chapter 53, the Applicant certifies as follows:

(1) It will not use Federal assistance authorized 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and it will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

08. Bus Testing

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components is required to provide the following certification. FTA may not provide Federal assistance for the acquisition of any new bus model or bus model with a major change until the Applicant provides this certification by selecting Category ''08.''

As required by 49 U.S.C. 5318 and FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The bus model will have been tested at FTA's bus testing facility; and

B. The Applicant will have received a copy of the test report prepared on the bus model.

09. Charter Service Agreement

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C.133 or 142, for such projects until the Applicant enters into this Charter Service Agreement by selecting Category ''09.''

A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.4, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, ''Charter Service,'' 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

B. The Applicant understands and agrees that:

(1) The requirements of FTA regulations, ''Charter Service,'' 49 CFR part 604, will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the project provide,

(2) The definitions of FTA regulations, ''Charter Service,'' 49 CFR part 604, will apply to this Charter Service Agreement, and

(3) A pattern of violations of this Charter Service Agreement may require corrective measures and imposition of remedies, including barring the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has engaged in that pattern of violations from receiving FTA financial assistance, or withholding an amount of Federal assistance as set forth in FTA regulations, ''Charter Service,'' 49 CFR part 604, Appendix D.

10. School Transportation Agreement

An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 for such projects until the Applicant enters into this School Transportation Agreement by selecting Category ''10.''

A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with

Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, ''School Bus Operations,''49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), the terms and conditions of which are incorporated herein by reference.

B. The Applicant understands and agrees that:

(1) The requirements of FTA regulations, ''School Bus Operations,'' 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractors, or other participants in the project provide,

(2) The definitions of FTA regulations, ''School Bus Operations,'' 49 CFR part 605 will apply to this School Transportation Agreement, and

(3) If there is a violation of this School Transportation Agreement, FTA will bar the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has violated this School Transportation Agreement from receiving Federal transit assistance in an amount FTA considers appropriate.

11. Demand Responsive Service

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized for 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized for 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category ''11.''

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. Alcohol Misuse and Prohibited Drug Use

If the Applicant is required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 655, to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ''12.''

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655.

13. Interest and Other Financing Costs

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Paul S. Sarbanes Transit in Parks Program is required to provide the following certification. FTA may not provide Federal assistance to support interest or other financing costs until the Applicant provides this certification by selecting Category ''13.''

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest or other financing costs unless it is eligible to receive Federal assistance for those costs and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

14. Intelligent Transportation Systems

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture,'' is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category ''14.'' An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring the Applicant's commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture.''

A. As provided in SAFETEA-LU section 5307(c), 23 U.S.C. 512 note, apart from certain exceptions, ''intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [shall] conform to the national architecture, applicable standards or provisional standards, and protocols developed under [SAFETEA-LU, section 5307] subsection (a).'' To facilitate compliance with SAFETEA-LU section 5307(c), 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects,'' at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing.

B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

15. Urbanized Area Formula Program

Each Applicant for Urbanized Area Formula Program assistance authorized under 49 U.S.C. 5307 is required to provide the following certifications on behalf of itself and any subrecipients participating in its projects. Unless FTA determines otherwise in writing, the

Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. If, however a ''Designated Recipient'' as defined at 49 U.S.C. 5307(a)(2)(A) enters into a Supplemental Agreement with FTA and a Prospective Grantee, that Grantee is recognized as the Applicant for Urbanized Area Formula Program assistance and must provide the following certifications and assurances.

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the ''Security'' tab page of the TEAM-Web ''Project Information'' window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.

FTA may not award Urbanized Area Formula Program assistance to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to expend one (1) percent of its Urbanized Area Formula Program assistance for eligible transit enhancements unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list or the Applicant attaches in TEAM-Web or includes in its quarterly report information sufficient to demonstrate that the Designated Recipients in its area together have expended one (1) percent of the amount of Urbanized Area Program assistance made available to them for transit enhancement projects.

FTA may not award Federal assistance for the Urbanized Area Formula Program to the Applicant until the Applicant provides these certifications and assurances by selecting Category ''15.''

As required by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of Project equipment and facilities;

C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the Project equipment and facilities;

D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, not more than fifty (50) percent of the peak hour fare;

E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5307: (1) Will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has assured or will assure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

J. In compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as

defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this Federal fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the total amounts the Designated Recipients receive each Federal fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding Federal fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

16. Clean Fuels Grant Program

Each Applicant for Clean Fuels Grant Program assistance authorized under 49 U.S.C. 5308 is required to provide the following certifications on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the Clean Fuels Grant Program until the Applicant provides these certifications by selecting Category ''16.''

As required by 49 U.S.C. 5308(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Clean Fuels Grant Program assistance, and 49 U.S.C. 5307(d)(1), the designated recipient or the recipient serving as the Applicant on behalf of the designated recipient, or the State or State organization serving as the Applicant on behalf of the State, certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;

E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) Has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and

J. The Applicant certifies will operate vehicles purchased with Federal assistance provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

17. Elderly Individuals and Individuals With Disabilities Formula Grant Program and Pilot Program

Before FTA may award Elderly Individuals and Individuals with Disabilities Formula Grant Program assistance and, if applicable, Elderly Individuals and Individuals with Disabilities Pilot Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the preaward determinations required by 49 U.S.C. 5310. Because certain information is

needed before FTA can make those determinations, each State is requested to provide the following certifications assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5310 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Elderly Individuals and Individuals with Disabilities Formula Grant Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by 49 U.S.C. 5310 and Section 3012 of SAFETEA–LU, respectively. The State is thus requested to select Category ''(17).''

A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and Individuals with Disabilities Formula Grant Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA–LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA–LU: (1) Will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by section 3012(b)(3) and (4), for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the State concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. In compliance with 49 U.S.C. 5310(d)(2)(A) and section 3012(b)(2), the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310;

E. In compliance with 49 U.S.C. 5310(d)(2)(C), the State certifies that allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA–LU will be distributed on a fair and equitable basis; and

F. In compliance with 49 U.S.C. 5310(d)(2)(B) and Subsection 3012(b)(2) of SAFETEA–LU, the State certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

18. Nonurbanized Area Formula Program for States

The provisions of 49 U.S.C. 5311 establishing the Nonurbanized Area Formula Program for States do not impose, as a pre-condition of award, any explicit certification or assurance requirements established specifically for that program. Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of this Nonurbanized Area Formula Program assistance. Separate certifications and assurances have been established in Category 22 for an Indian tribe that is an Applicant for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1).

Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the preaward determinations required by 49 U.S.C. 5311. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications and assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications

and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category ''(18).''

The State or State organization serving as the Applicant and that administers, on behalf of the State (State) the Nonurbanized Area Formula Program for States authorized by 49 U.S.C. 5311, assures on behalf of itself and its subrecipients as follows:

A. The State has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

B. The State has or will have satisfactory continuing control over the use of project equipment and facilities;

C. The State assures that the project equipment and facilities will be adequately maintained;

D. In compliance with 49 U.S.C. 5311(b)(2)(C)(i), the State's program has provided for a fair distribution of Federal assistance authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State;

E. In compliance with 49 U.S.C. 5311(b)(2)(C)(ii), the State's program provides or will provide the maximum feasible coordination of public transportation service to receive assistance under 49 U.S.C. 5311 with transportation service assisted by other Federal sources;

F. The projects in the State's Nonurbanized Area Formula Program are included in the Statewide Transportation Improvement Program and, to the extent applicable, the projects are included in a metropolitan Transportation Improvement Program;

G. The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5311(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

H. In compliance with 49 U.S.C. 5311(f), the State will expend not less than fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. 5311 to develop and support intercity bus transportation within the State, unless the chief executive officer of the State, or his or her designee, after consultation with affected intercity bus service providers, certifies to the Federal Transit Administrator, apart from these certifications and assurances herein, that the intercity bus service needs of the State are being adequately met.

19. Job Access and Reverse Commute Formula Grant Program

Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category ''19.''

A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;

(5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) Will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(6) In compliance with 49 U.S.C. 5316(f)(1) and 49 U.S.C. 5307(d)(1)(F), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct a statewide solicitation for applications, and make awards on a competitive basis; and that these activities will be carried out in a manner that complies with or will comply with 49 U.S.C. 5307(c);

(7) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(h) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); and (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements).

B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in

cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5316(f)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis;

D. In compliance with 49 U.S.C. 5316(g)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;

E. In compliance with 49 U.S.C. 5316(g)(3), The Applicant certifies that: (1) The projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public; and

F. In compliance with 49 U.S.C. 5316(c)(3), before the Applicant uses funding apportioned under 49 U.S.C. 5316(c)(1)(B) or (C) for projects serving an area other than that specified in 49 U.S.C. 5316(2)(B) or (C), the Applicant certifies that the chief executive officer of the State, or his or her designee will have certified to the Federal Transit Administrator, apart from these certifications herein, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived.

20. New Freedom Program

Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category ''20.''

A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) Will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;

D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and

E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

21. Paul S. Sarbanes Transit in Parks Program

Each State, tribal area, or local government authority that is an Applicant for Paul S. Sarbanes Transit in Parks Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Paul S. Sarbanes Transit in Parks Program to the Applicant until the Applicant provides these certifications *by selecting Category ''21.''*

A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Paul S.

Sarbanes Transit in Parks Program to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including the safety and security aspects of that project;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E) in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C. 5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements).

(7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation.

B. In compliance with 49 U.S.C. 5320(e)(2)(A), (B), and (D), the Applicant assures that it will:

(1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;

(2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and

(3) Consult with the appropriate Federal land management agency during the planning process.

22. Tribal Transit Program

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurances set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances *by selecting Category ''22.''*

In accordance with 49 U.S.C. 5311(c)(1) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian tribal governments, the Applicant certifies and assures as follows:

A. The Applicant assures that:

(1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

(2) It has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) The project equipment and facilities will be adequately maintained; and

(4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources.

B. In accordance with 49 CFR 18.36(g)(3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36.

C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document.

D. If its application exceeds $100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.

23. Infrastructure Finance Projects

Each Applicant for Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award Infrastructure Finance assistance to the Applicant until the Applicant provides these certifications by selecting Category ''23.''

A. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5307 applicable to Applicants seeking Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42

U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 23 U.S.C. chapter 6, not more than fifty (50) percent of the peak hour fare;

(5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 23 U.S.C. chapter 6: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for Infrastructure Finance assistance, 23 U.S.C. chapter 6, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

(7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), (1) the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

(9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

(10) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of those funds authorized under 49 U.S.C. 5307 for public transportation security projects (this includes only capital projects in the case of a Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

(11) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5309(d)(1)(K): (1) an Applicant that serves an urbanized area with a population of at least 200,000 will expend not less than one (1) percent of the amount it receives each Federal fiscal year under 49 U.S.C. 5307 for transit enhancements, as defined at 49 U.S.C. 5302(a), and (2) if it has received transit enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that Federal fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5309 applicable to Applicants seeking Infrastructure Finance assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless it is eligible to receive Federal assistance for those expenses and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

24. Deposits of Federal Financial Assistance to State Infrastructure Banks

The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of a State (State) and that is also an Applicant for Federal assistance authorized under 49 U.S.C. chapter 53 that it intends to deposit in its SIB is requested to provide the following assurances on behalf of itself, its SIB, and each subrecipient. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its SIB and prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. FTA may not award Federal assistance for the SIB Program to the State until the State provides these assurances by selecting Category ''24.''

The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA–LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA–21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the State (subrecipient) that each public transportation project financed with

Federal assistance derived from SIB will be administered in accordance with:

A. Applicable provisions of section 1602 of SAFETEA–LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA–21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181;

B. The provisions of the FHWA, FRA, and FTA or the FHWA and FTA cooperative agreement with the State to establish the State's SIB Program; and

C. The provisions of the FTA grant agreement with the State that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of section 1602 of SAFETEA–LU, now codified at 23 U.S.C. 610, or section 1511 of TEA–21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the State, or the provisions of the FTA grant agreement.

D. The requirements applicable to projects of 49 U.S.C. 5307 and 5309, as required by 49 U.S.C. 5323(o); and

E. The provisions of any applicable Federal guidance that may be issued as it may be amended from time-to-time, unless FTA has provided written approval of an alternative procedure or course of action.

Selection and Signature Page(s) follow.

BILLING CODE 4910–57–P

APPENDIX A

FEDERAL FISCAL YEAR 2009 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Categories 01 – 24. _____

OR

The Applicant agrees to comply with applicable provisions of the Categories it has selected:

Category	Description	
01.	Assurances Required For Each Applicant.	_____
02.	Lobbying.	_____
03.	Procurement Compliance.	_____
04.	Protections for Private Providers of Public Transportation.	_____
05.	Public Hearing.	_____
06.	Acquisition of Rolling Stock for Use in Revenue Service.	_____
07.	Acquisition of Capital Assets by Lease.	_____
08.	Bus Testing.	_____
09.	Charter Service Agreement.	_____
10.	School Transportation Agreement.	_____
11.	Demand Responsive Service.	_____
12.	Alcohol Misuse and Prohibited Drug Use.	_____
13.	Interest and Other Financing Costs.	_____
14.	Intelligent Transportation Systems.	_____
15.	Urbanized Area Formula Program.	_____
16.	Clean Fuels Grant Program.	_____
17.	Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.	_____
18.	Nonurbanized Area Formula Program for States.	_____
19.	Job Access and Reverse Commute Program.	_____
20.	New Freedom Program.	_____
21.	Paul S. Sarbanes Transit in Parks Program.	_____
22.	Tribal Transit Program.	
23.	Infrastructure Finance Projects.	_____
24.	Deposits of Federal Financial Assistance to a State Infrastructure Banks.	_____

APPENDIX A

FEDERAL FISCAL YEAR 2009 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2009.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2009.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. E8–26030 Filed 10–30–08; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

National Technical Assistance Center for Parks and Public Lands

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice: Request for Proposals.

SUMMARY: This solicitation is for proposals from organizations to implement a National Technical Assistance Center for Alternative Transportation in Public Lands. The Center is to assist the Federal Transit Administration (FTA) in the coordinated provision of technical assistance under the Paul S. Sarbanes Transit in Parks program. The Center is to develop, administer, distribute, and oversee multiple technical assistance products to support land management agencies, States, and local and tribal governments in alternative transportation projects serving federally managed parks and public lands. Organizations that submit proposals should have technical assistance expertise and experience in transportation planning, coordination and operations on parks and public lands. FTA will award a cooperative agreement (one base year plus two option years) for an estimated amount of $4,500,000. The funding is authorized under section 3021(d)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and subsequently appropriated. For the first year of the project, $1,500,000 will be made available. Funding for subsequent years will be based on available annual appropriations as well as annual performance reviews.

Use of Funds: The organization selected shall (1) provide on-demand and proactive technical assistance in alternative transportation project-level scoping, planning, and operations; (2) provide training and workshops; (3) perform outreach, communications, and coordination of services to support land management agencies in planning processes; (4) maintain a central repository of resources and disseminate resources; (5) support the project evaluation process; (6) convene and collaborate with an interagency peer review group; and (7) perform project administration and management.

DATES: Proposals must be submitted electronically by December 30, 2008.

ADDRESSES: Proposals shall be submitted electronically to *http://www.grants.gov*. Grants.Gov allows organizations to find and apply for funding opportunities electronically from all Federal grant-making agencies. Grants.Gov is the single access point for over 1,000 grant programs offered by the 26 Federal grant-making agencies.

FOR FURTHER INFORMATION CONTACT: Scott Faulk, Office of Program Management, Federal Transit Administration, 202–366–1660; FAX 202–366–7951; e-mail: *Scott.Faulk@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 3021 of SAFETEA–LU established a new program called the Paul S. Sarbanes Transit in Parks program (49 U.S.C. 5320). The purpose of this program is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program funds capital and planning expenses for alternative transportation systems such as buses and trams in federally-managed parks and public lands. The Paul S. Sarbanes Transit in Parks legislation further allows the FTA to spend program funds to carry out planning, research, and technical assistance activities. FTA oversees the funds allocated to technical assistance to support program participants in planning, implementing, and evaluating alternative transportation projects on parks and public lands. SAFETEA–LU authorizes $97 million in funding for the program for Fiscal Years (FY) 2006 through 2009. Of this funding, no more than 10 percent of the amount made available for any given FY under section 49 U.S.C. 5338(b)(2)(J) may be used to carry out planning, research, and technical assistance activities.

I. Funding Opportunity Description

FTA is soliciting proposals for a cooperative agreement to develop and implement a program of technical assistance and training for Federal land management agencies that shall include on-demand and proactive technical assistance in project-level scoping and planning, a resource clearinghouse, training and workshops, publication of best practices, and preparation of technical manuals and other reference materials. The Paul S. Sarbanes Transit in Parks program would be well-served through a coordinated and efficient use of its limited resources. A National Technical Assistance Center for alternative transportation on parks and public lands is intended to meet technical assistance needs among land management agencies and other eligible awardees and to achieve program and process consistencies, realize significant cost and time savings, and build cooperative relationships in support of the Paul S. Sarbanes Transit in Parks program. Such technical assistance will allow Federal lands to serve the public more effectively through enhanced conservation of natural and cultural resources and by providing high quality experiences for visitors on public lands.

The main goal of a National Technical Assistance Center for Alternative Transportation on Parks and Public Lands is to assist FTA in the timely, coordinated provision of technical assistance, case management, and program support elements of SAFETEA–LU, section 3021. To accomplish this goal the Center is to develop, administer, disseminate, and oversee multiple technical assistance products and services to support land management agencies and State, local, and tribal governments in alternative transportation projects serving federally managed parks and public lands. FTA will award a cooperative agreement (one base year with two option years) of $4.5 million from funding authorized in SAFETEA–LU and subsequently appropriated. The tasks of the Center include: (1) Project administration and management; (2) organization of and coordination with a peer review group; (3) technical assistance; (4) training and workshops; (5) development of outreach, communication and coordination in support of alternative transportation planning; and (6) knowledge management and information dissemination. A desirable organization will have demonstrated expertise in issues of transportation planning and operations on parks and public lands. Ideally, an organization will have experience in providing technical assistance to Federal land management agencies on issues related to water and land-based transportation, particularly in relation to the protection of natural and cultural resources.

Background

Congestion in and around parks and public lands causes traffic delays and noise and air pollution that substantially detract from the visitor's experience and the protection of natural resources. In August 2001, the Department of Transportation (DOT) and the Department of the Interior (DOI) published a comprehensive study of alternative transportation needs in national parks and related federal lands. The study identified significant alternative transportation needs at sites

managed by the National Park Service (NPS), the Bureau of Land Management (BLM), and the United States Fish and Wildlife Service (FWS). Additionally, a supplement to this report identified United States Department of Agriculture Forest Service (FS) sites that would benefit from such services. Section 3021 of SAFETEA–LU (49 U.S.C. 5320) addresses these needs by establishing a new program called the Paul S. Sarbanes Transit in Parks program to fund alternative transportation projects in national parks and other federal lands. The goals of the program are to: (1) Conserve natural, historical, and cultural resources; (2) reduce congestion and pollution; (3) improve visitor mobility and accessibility; (4) enhance visitor experience; and (5) ensure access to all, including persons with disabilities.

Eligible applicants to the Paul S. Sarbanes Transit in Parks program include: federal land management agencies, which are defined as federal agencies that manage an eligible area; and State, tribal, and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a federal land management agency, alone or in partnership with a federal land management agency or other governmental or non-governmental participant. An eligible area is a federally owned or managed park, refuge, or recreational area that is open to the general public.

A qualified alternative transportation project is a planning or capital project in or in the vicinity of a federally owned or managed park, refuge, or recreational area that is open to the general public and meets the goals of the program. SAFETEA–LU defines alternative transportation as ''transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. The definition of alternative transportation also includes non-motorized transportation systems (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft)'' (49 U.S.C. 5320(b)(3)).

To formalize the Paul S. Sarbanes Transit in Parks program management structure, section 3021 of SAFETEA–LU authorizes the establishment of interagency and multi-disciplinary teams to develop federal land management agency alternative transportation policy, procedure, and coordination; and the development of procedures and criteria for the planning, selection, funding, implementation and oversight of a program of projects. As a result, the Paul S. Sarbanes Transit in Parks Interagency Working Group was established and consists of representatives from FTA, DOI, NPS, BLM, FWS, and USFS, and meets regularly in order to coordinate program activities. Paul S. Sarbanes Transit in Parks program-related activities such as providing workshops and training, technical assistance in project-level scoping and planning, publication of best practices, and providing manuals and other reference materials are subject to advisement by the Interagency Working Group.

To date, FTA has provided technical assistance products including a program manual and a ''webinar''-style workshop that supplies information on the program and guidance on applying for Paul S. Sarbanes Transit in Parks funding (available at *http://www.fta.dot.gov/atppl*). A limited number of transportation assistance group (TAG) visits have been made available to assist potential project sponsors in the initial stages of planning; several such visits have been completed and subsequent reports have been produced. A National Technical Assistance Center will allow the FTA to more efficiently support alternative transportation related activities in parks and public lands by providing a ''one-stop'', coordinated resource for future technical assistance activities and products.

Scope of Work

This solicitation is for proposals from organizations to implement a National Technical Assistance Center for Alternative Transportation in Public Lands. The Center is to assist the Federal Transit Administration (FTA) in the coordinated provision of technical assistance under the Paul S. Sarbanes Transit in Parks program. The Center is to develop, administer, distribute, and oversee multiple technical assistance products to support land management agencies, States, and local and tribal governments in alternative transportation projects serving federally managed parks and public lands. In the performance of this cooperative agreement, the awardee shall accomplish the following tasks:

Task 1—On-Demand and Proactive Technical Assistance in Alternative Transportation Project-level Scoping, Planning, and Operations

A. The Center shall conduct a comprehensive assessment of technical assistance needs in the area of alternative transportation on federally managed lands and public parks. Based on this information the Center will formulate a technical assistance strategy and plan in coordination with FTA, Federal Lands Highway, DOI, NPS, FWS, BLM, and FS staff members of the Paul S. Sarbanes Transit in Parks program Interagency Working Group.

B. The Center shall respond to and pro-actively solicit project-specific technical requests, including full-time Center staff answering questions and providing technical expert and advice by phone and email, with occasional site visits as needed and subject to funding availability. Center staff would also link outside technical specialists to requesters. The primary goal of this deliverable is to maintain access to a wide variety of technical expertise that could be made available on multiple topic areas through this centralized service. Examples of assistance that the awardee will provide include (but may not be limited to) assistance in project cost estimating; financial analysis/planning; carrying capacity; transit planning; vehicle specifications and procurement; transit operations; alternative fuels; congestion management; data collection and monitoring; contracting; safety; transportation and resource protection; and/or historic landscapes and/or transportation infrastructure. Technical expertise is often needed for matters of detailed study, and for periods of short duration (i.e. assistance to a park or public land in data collection or in facilitating a technical project review that can vary between a few days to a week). These types of requests are necessary to ensure that alternative transportation projects maintain a high degree of technical quality and that they continue to meet the objectives of the Paul S. Sarbanes Transit in Parks program. Technical assistance is also needed on an ongoing basis to assist project sponsors over the period of months or years in the development and implementation of a project. It is important to have continuing, reliable support for project sponsors.

C. The awardee shall develop and maintain a strategy and resources for on-demand project teams and consultants. In addition to responding to requests, the Center will be pro-active in soliciting requests, through advertising its services via electronic announcements or a newsletter, and contacting Paul S. Sarbanes Transit in Parks program awardees and potential applicants. The Center will develop relationships with Federal land managers, Tribal, State and metropolitan planning organizations and other Federal participants in transportation planning.

D. The awardee shall track, measure and evaluate the performance of the Center in providing technical assistance, and monitor progress towards targeted goals and outcomes. This may include development of a unique identification classification system that allows for tracking and reporting on services provided to the requester by the Center.

Task 2—Providing Training and Workshops

A. Curriculum development, design, and training shall be made available by the Center via various media to target specific topics related to alternative transportation in parks and public lands. Development of curriculum and training shall be done in coordination with the FTA project manager, and members of the Interagency Working Group. This includes training agencies that are targeted awardees of program assistance, as well as prospective partners of such agencies and corresponding transportation planning agencies that will need to reflect Paul S. Sarbanes Transit in Parks program initiatives in statewide and regional plans and programs.

B. The awardee shall make 4–6 training sessions and/or workshops per year available via various media to target specific topics related to alternative transportation as it relates to the enhancement of visitor experience and natural resource protection across the range of land management areas. For instance, transit routing and scheduling for land management agencies, context sensitive transit solutions in federal lands, strategies to increase ridership among recreational visitors, partnership strategies between transit agencies, coordinating with local planning organizations, transit planning, vehicle procurement, and basics of transit operations. Training should be made available to Federal lands management agency staff, resource agencies, transit agencies, State departments of transportation, local governments, and State, regional and metropolitan planners. A technical assistance center Web site should provide the primary framework for organizing offerings of training and for communicating and/or disseminating materials.

C. The awardee shall host at least two (2) regional forums in geographic areas where there are particularly good opportunities for partnerships between various types of entities. The awardee will convene federal lands managers, transit agencies, State departments of transportation, local officials, planners, and other stakeholders to discuss opportunities to include alternative transportation serving federal lands and the Paul S. Sarbanes Transit in Parks program.

D. The Center will facilitate details of meeting and possible related travel arrangements for transportation professionals to speak, facilitate, or lead a training opportunity offered as part of the Center's services. Travel expenses associated with the delivery of training services by the Center are subject to approval by the FTA project manager at least 120 days prior to scheduled training delivery date.

Task 3—Outreach, Communications, and Coordination of Services To Support Land Management Agencies in Planning Processes

A. The Center will establish an Outreach and Communications Operations Strategy of the Center that addresses consistent partnership processes, policies and procedures in support of the facilitation and coordination of communication and interaction between Federal lands managers, metropolitan planning organization (MPOs), States, and other Federal participants in transportation planning. The strategy shall be accomplished via e-mail, phone, Web-based services and on-site opportunities. This deliverable would require that the Center support the facilitation of partnerships through convening conference calls and meetings, answering technical questions, referral of participants to publications and other experts in order to assist land management agency in developing partnerships, hiring planning firms, and contracting for transportation services.

B. The Center shall advise and/or assist land management agencies in their participation in transportation planning processes. The goal of this deliverable is to address the needs of federal park and public lands managers to engage in and be consistent with the metropolitan and Statewide planning and public participation requirements found in 49 U.S.C. 5303, 5304, and 5307(d). Federal lands, resource agencies, States and metropolitans alike need assistance to fulfill the consultation and participation requirements of the law. Statutory transportation planning requirements associated with U.S. DOT funding sources promote close coordination of transportation system plans, programs and projects between the federal lands agencies and corresponding state and regional transportation planning organizations. The Center shall assist in the successful development of alternative transportation planning processes consistent with federal land management agencies, State, regional, and metropolitan planning processes under Titles 23 and 49.

C. The Center shall provide assistance to land management agency units for review of planning studies funded under the Paul S. Sarbanes Transit in Parks program in order to ensure their quality and efficacy before a participant moves towards implementation. The Center shall cooperate with land management staff in the development of plans that are consistent with the planning processes and requirements under Titles 23 and 49.

D. The Center shall develop a total of four (4) partnering case studies (at least one per land management agency) plus a synthesis report that describes successful alternative transportation partnerships. Case studies would include examples of partnerships between federal lands agencies (other than NPS) and other entities that may include: Transit agencies that provide transit service to public lands; private companies such as ski resorts, bike rental companies, or other concessioners that fund transportation services on or to public lands; State governments providing grants; or private or public service providers. Case studies may also include successful examples of federal lands and others combining funding sources such as federal lands fees, state and local taxes, federal transportation grants, and private sources. Because most national parks and public land units view visitor transportation as necessary but not a primary mission, partnerships or contractual relationships are often sought to address visitor transportation needs in ways that minimize the cost to park and public lands agencies, both in terms of staff and financial resources required.

E. The awardee shall develop and produce 'best practices' manuals that would specifically focus on and discuss practices used in and aspects of the planning processes and implementation of successful alternative transportation systems in public lands. Generally, manuals would be available in electronic format and would address such issues as: How systems were developed; who the partners were and what each contributed; what service is provided; how the service is used; ridership; what benefits the system provides; cost information; how it is funded and who operates the system; what is the arrangement with the operator; how particular challenges were overcome, etc. Additionally, the awardee shall develop a manual that provides methodology for the evaluation of newly instituted and existing

alternative transportation systems and services that would serve the purposes of making operational adjustments for greater efficiency and to inform management decisions about whether to sustain, expand, or curtail the service, as well as providing a rich source of lessons learned for reference by others seeking to plan and implement comparable alternative transportation services.

F. The awardee shall coordinate all aspects of the management and implementation of the Paul S. Sarbanes Transit in Parks Web site (*http://www.fta.dot.gov/atppl*), which includes (a) maintaining and updating all information for each section of the Web site using best available technologies on a regularly scheduled basis; (b) updating the front page once each month; (c) entering up to 5 useful practices in the database each month; (d) posting documents and/or announcements per month; (e) maintaining an active list serve and consistent distribution of real-time information using best available and searchable technology; (f) responding to submissions to the Paul S. Sarbanes Transit in Parks electronic mailbox within 3 business days; and (g) providing ongoing recommendations for improvement strategies as needed. All documents and information posted on the Web site must meet the requirements and compliance of section 508 of the Rehabilitation Act. The awardee shall work with the Project Officer to establish a plan for approval of content for posting and disseminating information using these mechanisms.

G. The awardee shall produce other technical assistance manuals as needed and determined through task 6.

H. The awardee shall provide research-related technical assistance to project managers responsible for planning alternative transportation that provide access to or within Federal land management areas. This includes queries regarding specific information, publications, existing tools (such as trip planners or other mobility management tools), strategies and available data as requested.

I. The Center will identify transit services that are operating near federal lands and work with the transit operator and federal land to advertise the transit option to federal land users. Where a transit option for accessing the federal land already exists the Center will assist, when requested, to coordinate service to make it more simple and convenient for the user.

J. The Center will facilitate peer-to-peer learning by matching project sponsors with others who are in different stages of the process, convening conference calls, holding meetings, conducting outreach, and providing other opportunities for peer-to-peer learning.

K. The Center will also facilitate details of travel arrangements for transportation professionals to federal land units. This may include paying salaries and direct expenses for transportation professionals working full time with a federal land unit on alternative transportation.

Task 4—Maintain Central Repository of Resources and Disseminate Resources

A. The Center shall establish a central repository of resources, make them readily accessible, and disseminate them broadly. The repository will include technical manuals, best practices, studies, reports, guides, articles, videos, training manuals, on-line resources, etc. related to alternative transportation in parks and public lands. The five deliverables of this task are: (1) Complete an inventory of relevant materials produced to date; (2) publish this inventory on the web, providing up to date and user friendly access to the resources on-line; (3) target and distribute resources to program beneficiaries; (4) maintain a list serve to distribute new resources that are developed; (5) determine which materials should be consolidated, updated, or otherwise built upon to increase the effectiveness of materials and consolidate, update, and build upon under tasks 5D and 5E; and (6) determine gaps in the literature that the Center should fill by producing a new report and produce this report under tasks 5D, E, and F. This deliverable includes compiling and assessing all previous relevant materials produced by DOI, NPS, FWS, BLM, FS, DOT, Transportation Research Board, Transit Cooperative Research Program, universities, associations, private companies, State and local governments and others and therefore requires a survey of existing literature and materials.

B. The Center shall develop an interagency database concept and implementation strategy for alternative transportation system data collection and sharing. A key finding of earlier efforts is that alternative transportation system data is best captured from other existing data systems that are being given priority attention. Examples of existing data systems include Asset Management in DOI and corresponding efforts within the U.S. Forest Service.

C. The awardee shall develop and maintain the Paul S. Sarbanes Transit in the Parks Technical Assistance Center Web site that provides the primary framework for organizing offerings of training and for communicating and/or disseminating training-related materials and details.

Task 5—Support the Project Evaluation Process

The Center shall perform the following for 80–100 project proposals per year:

A. Develop an electronic system (FTP/Web-based) for submission and organization of project proposals and supporting materials.

B. Compile project proposals from the federal land management agencies (FLMA) and FTA.

C. Organize project proposals in a logical, easy to find fashion, that can be sorted by the following measures: type of project (planning vs implementation); alphabetical by FLMA; alphabetical by state; funding requested (largest to smallest).

D. Populate the Paul S. Sarbanes Transit in Parks database with data from the proposals submitted for the program. FTA will provide the database structure to the center.

E. Develop an Excel spreadsheet of all proposals received with key summary information about the proposal (land unit, state, agency, type of project, one sentence project description, funding request, name of awardee of funds).

F. Submit a summary report of proposals received such as aggregate dollar amount requested and breakdowns by types of project, land management agency, new system vs. existing system, etc.

G. Distribute the organized proposals, database figures, summary spreadsheet, and summary report on a CD and in a three-ring binder (hard copy) to each member of the review committee.

H. Compile evaluation rating forms from FTA for each member of the review committee, enter the ratings and comments into a database, organize this information, and report it to the review committee members.

I. Coordinate continuously with FTA staff and respond to FTA requests for information. FTA will have access to the database, summary spreadsheet, list of projects and other deliverables at all times.

J. Draft a ''lessons learned'' document, in coordination with FTA and FLMA staff, for consideration in managing the evaluation process for subsequent years.

Task 6—Convene and Collaborate With a Peer Review Group

A. The awardee shall establish and coordinate with a Peer Review Group consisting of representatives from National Parks Conservation

Association, Transportation Review Board (TRB) Transportation in Public Lands Committee, and other public land-related associations, transit general managers, managers of public lands that have or are planning alternative transportation systems, State and local DOT's, American Public Transportation Association (APTA), American Association of State Highway Transportation Officials (AASHTO), Association of Metropolitan Planning Organizations (AMPO), American Bus Association, and other applicable organizations. The Peer Review Group will identify and review materials for the development of a central repository of resources and information. The Group may offer advice on technical assistance coordination, and provide input regarding development of alternative transportation systems and infrastructure.

B. The awardee, in coordination with the FTA Project Officer, may provide assistance to the Peer Review Group on a regular basis. This may include organizing conference calls as needed, attending relevant and value-added national meetings/conferences, providing input regarding the development of Peer Review Group activities related to alternative transportation project planning and implementation in Federal lands management areas, formulating agendas and identifying speakers for the Peer Review Group and their meetings.

C. Assist Federal program staff to conduct at least one special interest meeting to be delivered via electronic, Web-based means each year. The initial meeting should detail the Center's central repository development, organization, and how to access information for land management field staffs. Subsequent annual meetings should be made accessible via electronic, Web-based delivery and focus on targeted topics selected in consultation with FTA, members of the Interagency Working Group, and members of the Peer Review Group. Special interest meetings should target topics to include stakeholders from National, State, regional and local levels that have expertise on the selected topic addressed at the meeting. For each workshop or meeting, participant lists and invitations for the meeting should be submitted to the Federal Project Officer for review at least 60 days prior to the targeted meeting date for approval. Briefing materials should be submitted to the Project Officer at least two weeks prior to the meeting for review and approval. The meeting should lead to the outcome of publications (*e.g.*, strategy paper, tool, fact sheet, etc.) related to the topic discussed. In addition the awardee should submit a summary report of the meeting within 30 working days.

Task 7—Project Administration and Management

A. The awardee shall meet with FTA point of contact within ten (10) working days after award to discuss the objectives of the cooperative agreement, roles and responsibilities, and any related projects.

B. The awardee will hold monthly meetings with FTA point of contact to review the status of the project, with the option to have additional meetings as necessary. Areas of concern are: (1) Accomplishments to date, (2) reviewing progress on tasks, and (3) challenges or problems in addressing specific tasks or meeting targeted deliverable dates. The awardee shall provide minutes of the meeting to the Project Officer within five business days of the meeting.

C. The awardee shall submit quarterly progress reports to the FTA point of contact. The reports shall include the following items and provide information relevant for the particular period:

- General assessment of the progress of the Center development and design.
- Significant accomplishments by objective and task.
- Summary of technical assistance services requested.
- Summary of technical assistance services provided.
- Project issues/concerns and recommended solutions.
- Updated project schedule.

—Status of current tasks
—List of completed tasks
—Percent complete by task
—If slips in the schedule occur, the awardee shall propose how to mitigate the schedule deviation(s)

- Total budget by task.

—Amount spent to date by task
—Amount remaining by task

- Travel expense report.

D. The awardee will brief FTA and other stakeholders, such as the bureaus within the DOI and the United States Department of Agriculture Forest Service, semi-annually on their technical assistance findings, key themes and results. The awardee will produce a semi-annual report that shall include: (1) Up-to-date budget information; (2) status of accomplishments for each Task 1–6; and (3) deliverables for the subsequent reporting period (next 6 months) for each Task 1–6. The awardee will provide a copy of the report to members of the Interagency Working Group a week before a scheduled briefing to be accomplished either face-to-face or via conference call.

II. Award Information

FTA will fund one cooperative agreement with one base year and two option years. Year one of the cooperative agreement is for one and one-half million dollars ($1,500,000). The anticipated notification date is January 15, 2009, with an anticipated starting date for the successful applicant of March 3, 2009. Subsequent annual funding will be based on annual appropriations and annual performance evaluations by FTA. Awardees with existing FTA projects are eligible to compete for this cooperative agreement. FTA will participate in activities by attending review meetings, commenting on reports, maintaining frequent contact with the project manager and approving key decisions, including travel authorizations, and any redirecting of activities if needed.

III. Eligibility Information

FTA is particularly interested in proposals for this cooperative agreement from organizations with demonstrated experience in land- and water-based transportation system planning and in working with Federal land management agencies or in the context of rural transportation. A strong applicant has the following characteristics:

- Experience working cooperatively and effectively on multidisciplinary teams in relationship to transportation issues within and/or near Federal land management units;
- Experience and demonstrated capacity for providing effective off-site technical assistance, including technical assistance by telephone and e-mail, topic-based conference calls, the Internet (including the development of Web content), etc.;
- Capacity for developing and managing a technical assistance network using multiple types of strategies (e.g., long distance, Web-based, peer-to-peer, communities of practice, etc.);
- Capacity for maintaining and managing information resources and related systems;
- Implementation of client-directed services;
- Capacity for successful outreach and communications strategies in advertising and solicitation of interest in services;
- Capacity and experience in building coordination and collaboration between public and private sector;
- Understanding the planning and implementation of a range of transportation system options on

Federal lands, particularly within the context of resource protection and visitor experience concerns;

• Demonstrated capacity and experience in coordinating events;

• Demonstrated capacity and experience in developing and conducting Web-based and face-to-face training; and

• Ability to breathe new life into a program by creating something new or revamping an existing structure.

Award of this cooperative agreement will be determined by the proposal that offers to provide the greatest value to the beneficiaries of the FTA National Technical Assistance Center for Parks and Public Lands in terms of performance rather than the proposal offering the lowest price. Applicants may propose to provide some or all of the services listed in the tasks described in the Scope of Work above. FTA reserves the right to award one or more cooperative awards.

IV. Proposal Content

Proposals should be submitted in double-spaced format using Times New Roman 12 point font. The application must contain the following components:

1. *Cover sheet (1 Page):* Includes entity submitting proposal, title, and contact information (*e.g.*, address, phone, fax, and e-mail). Name and contact information for the entity's key point of contact for all cooperative activities (if different from entity submitting proposal) shall also be provided.

2. *Abstract (2 Pages):* Abstract should include background, purpose, methodology, intended outcomes, and plan for evaluation.

3. Detailed budget proposal and budget narrative.

4. *Project narrative (not to exceed 80 pages):* Project narrative shall include the following information:

a. Staff qualifications, experience in providing technical assistance and implementing the tasks outlined in the solicitation. The proposal shall also include the proposed staff members' knowledge of issues related to alternative transportation on federal lands. One page biographical sketches for staff members shall be included in the appendices section of the proposal;

b. Existing and future capacity of organization to address the issues outlined in the proposal and ability to implement tasks 1–6 outlined under section I in this solicitation;

c. Methodology for addressing tasks 1–6 outlined under section I in this solicitation. The proposal shall also include objectives, activities, deliverables, milestones, timeline and intended outcomes for achieving the goals outlined in the scope for the first year;

d. Plan to work with stakeholders and build partnerships at the national, state, and local levels;

5. Project Management Plan that includes well-defined objectives, tasks, activities, timelines, deliverables, indicators, and outcomes.

6. Plan for evaluation of the Center activities and data collection.

7. Supplemental materials can be included in an appendices section that is beyond the 50 page limit. In addition to the full proposal, entities have the option to submit supplemental material such as: brochures, publications, products, etc. These materials shall be delivered electronically to Scott Faulk, Federal Transit Administration, 1200 New Jersey Avenue, SE., East Building, E44–417, Washington, DC 20590 or to *Scott.Faulk@dot.gov.*

V. Application Review Process and Evaluation Criteria

An interdisciplinary review panel, including those external to FTA will be convened to review each proposal. Proposals will be evaluated based on the following criteria and scoring system:

1. Staff qualifications, which includes experience in delivering technical assistance and training, knowledge of alternative transportation systems (particularly those on federal lands), demonstrated process skills in assessment, strategic planning, facilitation, and other key areas associated with identified tasks. The entity shall also address a plan for knowledge retention. (20%)

2. Existing capacity of the organization, which includes clearinghouse functions, web development and maintenance, technical assistance, training, long distance and on-site assistance strategies, and other identified tasks. (15%)

3. Understanding and reasonableness of proposed goals, objectives, methodologies, activities, timelines, deliverables, and budget. (40%)

4. Plan to collaborate and implement outreach activities with stakeholders and establish effective partnerships for transportation planning activities. (15%)

5. Plan for evaluation and data collection. (10%)

6. FTA may elect to meet in person two or three of the most qualified applicants.

This meeting will be held at the Department of Transportation in Washington, DC. The applicants will be notified of a date and time during which they will be asked to present their proposal to the FTA review panel. If an entity proposes to perform an individual task or tasks less than the full project, the proposal will be evaluated accordingly on its merits. If selected, the proposer may be asked to form a consortium with the applicant chosen to manage the larger project.

VI. Award Administration Information

The anticipated notification date for the award of the cooperative agreement is the January 15, 2009, with an anticipated start date for the successful applicant by March 3, 2009. FTA will notify the successful entity. Following the receipt of the FTA Administrator's notification letter, the successful entity will be required to submit its proposal through the FTA Transportation Electronic Award Management (TEAM) system Web site. FTA will manage the cooperative agreement through the TEAM system Web site. Before FTA may award Federal financial assistance through a Federal cooperative agreement, the entity must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. Since FY 1995, FTA has been consolidating the various certifications and assurances that may be required of its awardees and the projects into a single document published in the **Federal Register**. The FY 2008 Annual List of Certifications and Assurances for FTA Cooperative Agreements and Guidelines has been published in the **Federal Register** and posted on the FTA Web site at *http://www.fta.dot.gov.*

Issued in Washington, DC, this 17th day of October 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–25630 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–RSPA–1998–4470]

Pipeline Safety: Meetings of the Technical Pipeline Safety Standards Committee and Technical Hazardous Liquid Pipeline Safety Standards Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meetings.

SUMMARY: This notice announces public meetings of the Technical Pipeline

Safety Standards Committee (TPSSC) and of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

The committees will meet to discuss two important regulatory proposals and several future regulatory initiatives.

DATES: The meetings will be on December 11 and 12, 2008. The TPSSC and the THLPSSC will meet jointly on Thursday, December 11 from 9 a.m. to 5 p.m., and the TPSSC will meet on Friday, December 12 from 9 a.m. to 5 p.m. EST.

Name badge pick-up and on-site registration will be available on December 11 starting at 8 a.m. with the agenda taking place from 9 a.m. until approximately 5 p.m. Refer to the meetings Web site for updated agenda and times at: *http://primis.phmsa.dot.gov/meetings/Mtg56.mtg.*

Please note that the meetings will not be Web casted. However, presentations will be available on the meetings website within 30 days following the meetings.

ADDRESSES: The meetings will take place at the Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203. The phone numbers for reservation are 1–888–627–7076 or (703) 717–6200. Rooms are reserved at the hotel under USDOT Technical Advisory Committee meetings. For a guaranteed room at the hotel, attendees need to make their reservations no later than November 10, 2008. Priority is given to Committee members and to State Pipeline Safety Representatives. Any additional information or changes as well as a more detailed agenda will be posted on the PHMSA/OPS Web page about 15 days before the meetings take place at: *http://PHMSA.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel by phone at 202–366–4431 or by e-mail at *cheryl.whetsel@dot.gov* or Kay McIver by phone at 202 366–0113 or by e-mail at *kay.mciver@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details

PHMSA's Technical Advisory Committee meetings are open to the public. If time permits, individuals may make a brief statement. Members of the public interested in making a statement are encouraged to contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT** by November 24, 2008.

Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meetings, please contact Kay McIver at 202 366–0113 by November 24, 2008.

II. Committee Background

The TPSSC and THLPSSC are statutorily mandated advisory committees that advise PHMSA on proposed safety standards, risks assessments, and safety policies for natural gas pipelines and for hazardous liquid pipelines. Both committees were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the pipeline safety law (49 U.S.C. Chap. 601). Each committee consists of 15 members—with membership evenly divided among the Federal and State government, the regulated industry, and the public. The committees advise PHMSA on technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

III. Agenda

The agenda for the meetings will include discussions of comments received for two notices of proposed rulemakings, and to present to the Committees for a final rule vote on these two proposed rules. The two proposed rules for presentation are:

- Control Room Management/Human Factors—on December 11th, a proposal to revise the Federal pipeline safety regulations to address human factors and other components of control room management; and
- Integrity Management Program for Gas Distribution Pipelines—on December 12th, a proposal to amend the Federal pipeline safety regulations to require operators of gas distribution pipelines to develop and implement integrity management (IM) programs.

Authority: 49 U.S.C. 60102, 60115; 60118.

Issued in Washington, DC on October 27, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–26061 Filed 10–30–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35186]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant UP overhead temporary trackage rights between St. Louis (Grand Avenue), MO (milepost 2.1), on the one hand, and Pacific, MO (milepost 34.1), on the other, a distance of 32 miles.

The transaction may be consummated on or after November 16, 2008, and the temporary trackage rights are intended to expire on or about December 8, 2008. The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than November 7, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35186, must be filed with the Surface Transportation Board, 395 E

Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: October 27, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E8–25949 Filed 10–30–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies, which will occur in June 2009: Two (2) employee plans; two (2) exempt organizations; two (2) Indian tribal governments; two (2) tax exempt bonds, and one (1) Federal, state and local governments. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise.

DATES: Written applications or nominations must be received on or before Dec.1, 2008.

Application: Applicants may use the ACT Application Form on the IRS Web site (IRS.gov) or may send an application by letter with the following information: Name; Other Name(s) Used and Date(s) (required for FBI check); Date of Birth (required for FBI check); City and State of Birth (required for FBI Check); Current Address; Telephone and Fax Numbers; and e-mail address, if any. Applications should also describe and document the proposed member's qualifications for membership on the ACT. Applications should also specify the vacancy for which they wish to be considered.

ADDRESSES: Send all applications and nominations to: Steven J. Pyrek; Director TE/GE Communications and Liaison; 1111 Constitution Ave., NW.,—SE:T:CL, Penn Bldg; Washington, DC, 20224; FAX: (202) 283–9956 (not a toll-free number); e-mail: *steve.j.pyrek@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Steven Pyrek (202) 283–9966 (not a toll-free number) or by e-mail at *steve.j.pyrek@irs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law No. 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and Federal, state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements.

ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended for an additional year. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and Federal, state, local and Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and Federal, state, local and Indian tribal governments.

Nominees must go through a clearance process before selection by the Secretary of the Treasury. In accordance with the Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and an FBI criminal and subversive name check, fingerprint check, and security clearance.

Dated: October 30, 2008.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. E8–26075 Filed 10–30–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2008.

Last name	First name	Middle name/ initials
Ward	Ellen	Cleary
Zahid	Zayd	Mohamed
Bloom	Emma	Catherine
Beselin	Anita	Elisabeth
Salinas	Federico	
Pomfret	Melanie	L
Nixon	Douglas	Ross
Bross	Holger	
Duncalf	Iris	M
Boparai	Pardeep	Singh
Ap	John	
Marder	Israel	Dov
Rosa	Francisco	G
Green	Tzipporah	
Green	Benjamin	
Bernasconi	Christian	
Kurniawan	Didi	
Beck	Oliver	D
Elza	Katherine	Anne
Lee	Marie	
Lim	Wol Soo	
Jin	Chung	Sun

Dated: October 15, 2008.

Angie Kaminski,

Manager Team 103, Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E8–26073 Filed 10–30–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on November 17, 2008, in room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting will be open to the public and it will start at 8:30 a.m. and adjourn at 12 p.m.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will present their 2008 Report and recommendations to the Secretary of Veterans Affairs. Additionally, there will be a presentation and discussion on pesticide exposure and cognition.

The meeting will include time reserved for public comments. A sign-up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, Chair, Department of Environmental Health, Boston University School of Public Health, 715 Albany St., T2E, Boston, MA 02118.

Any member of the public seeking additional information should contact Dr. William Goldberg, Designated Federal Officer, at (202) 461–1667, or Dr. White, Scientific Director, at (617) 638–4620.

Dated: October 24, 2008.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–26065 Filed 10–30–08; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Friday,
October 31, 2008

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800, 2880, and 2920
Update of Linear Right-of-Way Schedule; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2880, and 2920

[WO–350–07–1430–PN]

RIN 1004–AD87

Update of Linear Right-of-Way Rent Schedule

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its right-of-way regulations to update the linear right-of-way rent schedule in 43 CFR parts 2800 and 2880. The rent schedule covers most linear rights-of-way granted under Title V of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and Section 28 of the Mineral Leasing Act of 1920, as amended (MLA). Those laws require the holder of a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or traverse public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

Section 367 of the Energy Policy Act of 2005 (the Act) directs the Secretary of the Interior to update the per acre rent schedule found in 43 CFR 2806.20. The Act requires that the BLM revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone. The Act also requires the Secretary of Agriculture (Forest Service) to make the same revisions for rights-of-way on National Forest System (NFS) lands.

DATES: This final rule is effective December 1, 2008.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the final rule, please contact Bil Weigand at (208) 373–3862 or Rick Stamm at (202) 452–5185. For information on procedural matters, please contact Ian Senio at (202) 452–5049. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted and Response to Comments
III. Procedural Matters

I. Background

Statutory: Section 367 of the Act, entitled ''Fair Market Value Determinations for Linear Rights-of-Way Across Public Lands and National Forests,'' directs the Secretary of the Interior to: (1) Update 43 CFR 2806.20, which contains the per acre rent schedule for linear rights-of-way; and (2) Revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way uses to reflect current values of land in each zone. In addition, pursuant to section 367(a) and (b), the Secretary of Agriculture is adopting BLM's rent schedule in 43 CFR subpart 2806, as updated by Section 367, for linear rights-of-way granted, issued, or renewed for use of National Forest System lands under Title V of FLPMA or Section 28 of the MLA.

Advance Notice of Proposed Rulemaking: The BLM published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on April 27, 2006 (71 FR 24836). The comment period for the ANPR ended on May 30, 2006. The purpose of the ANPR was to encourage members of the public to provide comments and suggestions to help with updating the BLM's and the Forest Service's (FS) rent schedule, as described in the Act. The BLM received ten responses to the ANPR, including comments on six specific questions posed there. The BLM utilized the comments received from the ANPR extensively in the development of the proposed and final rule.

Proposed Rule: The BLM published a proposed rule in the **Federal Register** on December 11, 2007 (72 FR 70376). The comment period for the proposed rule ended on February 11, 2008. The purpose of the proposed rule was to provide members of the public an opportunity to comment on the BLM's proposal to update the linear rent schedule, as described in the Act. The BLM received twelve responses to the proposed rule, including comments on six specific questions posed there. The BLM utilized the comments received on the proposed rule extensively in the development of the final rule.

Previous (1987) Linear Rent Schedule: On July 8, 1987, and September 30, 1987, the BLM published regulations establishing rent schedules for linear rights-of-way granted under Section 28 of the MLA and Title V of FLPMA (52 FR 25818 and 52 FR 36576). The FS used these same schedules to charge rent for rights-of-way across NFS lands. The update to these previous schedules contained in this final rule also affects the FS and users of NFS lands.

The 1987 rent schedule was developed to set fair market rent and minimize the need for individual real estate appraisals for each right-of-way requiring rent payments, as well as to avoid the costs, delays, and unpredictability of the appraisal process in reasonably setting fair market rent.

The 1987 rent schedule established eight fee zones based on the distribution of average land values by county in Puerto Rico and in each of the states, except Alaska and Hawaii. (The 1987 rent schedule did not apply to Alaska and Hawaii; however, the rent schedule in this final rule applies to all 50 states and the commonwealth of Puerto Rico. Linear right-of-way rental fees in Alaska were previously determined on a case-by-case basis based on local market values. There are no linear rights-of-way in Hawaii currently administered by either the BLM or the FS). Under the 1987 regulations, a county was assigned to one of the eight zone values, based on average land values in the county: lower-value counties were assigned lower-numbered zones. The eight zone values contained in the 1987 schedule were set at $50, $100, $200, $300, $400, $500, $600, and $1,000 per acre. A county's zone value was translated into a per acre zone rent by use of the adjustment formula described below. To calculate the annual right-of-way rental payment, the zone rent was multiplied by the total acreage within the right-of-way. The formula for zone rent was:

Zone rent = (zone value) × (impact adjustment) × (Treasury Security Rate) × (annual adjustment factor)

The zone value term in the formula was the land value that was established for each of the eight zones. The zone values established in 1987 were never updated, although it is generally recognized that land values increased significantly in most areas from 1987 to the present.

The impact adjustment term (or encumbrance factor) in the formula reflected the differences in land-use impacts between: (1) Oil, gas, and other energy-related pipelines, roads, ditches, and canals; and (2) Electrical transmission and distribution lines, telephone lines, and non-energy related pipelines. Energy-related pipelines and roads were considered as having a greater surface disturbance impact on the land, and were adjusted to 80 percent of the zone value. Electrical transmission and distribution lines, phone lines, and non-energy related pipelines with a smaller area of disturbance were adjusted to 70 percent of the zone value.

The Treasury Security term in the formula reflected a reasonable rate of return to the United States for the use of the land within the right-of-way. The 1987 regulations were based on a rate of return of 6.41 percent for a 1-year Treasury Security.

The zone rent was adjusted annually by the change in the Gross Domestic Product, Implicit Price Deflator index.

BLM Right-of-Way Program and Revenues: The BLM administers 96,000 rights-of-way, of which 66,000 are authorized under FLPMA and 30,000 are authorized under the MLA. However, only 48,600 are subject to a rental payment. Wyoming and New Mexico together account for slightly more than 30,000 of the rights-of-way subject to rent. The BLM collected approximately $20.6 million in right-of-way rental receipts for fiscal year 2007. This total includes receipts from both linear and site-type rights-of-way. Seventy-seven percent of all right-of-way rent receipts were collected by five BLM State Offices. These five State Offices and the revenues collected are listed in Table 1.

TABLE 1—RIGHT-OF-WAY RENTAL RECEIPTS FOR "TOP FIVE" BLM STATE OFFICES

State office	Total rental receipts (FY 2007)
Nevada	$4,386,150
Wyoming	4,086,382
California	3,210,892
New Mexico	2,669,556
Arizona	1,408,414
Total	15,761,394

Rent receipts from communication uses, which have their own rent schedule, totaled approximately $5 million, while receipts from other site-type rights-of-way, which normally require an appraisal to determine rent, and/or initial ad hoc billings, totaled approximately $9 million.

In fiscal year 2007, the BLM collected $6.5 million total rent for 12,545 linear rights-of-ways using the previous schedule. Of this amount, only 133 bills (for $52,400) were for rental payment periods (the length of time for which the holder is paying rent) of less than 1 year. The largest number of bills (5,864) was issued for one-year rental payment periods. The rent collected from these one-year bills totaled $4,781,000 ($815 per bill) and included approximately $852,000 for linear rights-of-way located in high value areas, such as in Clark County, Nevada, near the city of Las Vegas. The rent for these bills was generated using a similar methodology as the linear rent schedule, but was calculated using higher land values supported by appraisal data (used to develop ''unique zones'' with annual per acre rent values ranging from $280 to $6,000). Another 4,993 bills were issued for $133,172, covering a 5-year rental payment period. The average 5-year bill totaled $27, or less than $6 per bill on an annual basis. Lastly, a total of $89,000 was billed for rental payment periods of between 6 and 30 years.

To summarize, in fiscal year 2007 the BLM collected a total of $20.6 million in right-of-way rent receipts, but of that only $5.6 million was calculated using the previous Per Acre Rent Schedule. Another $852,000 was calculated using similar methodology as the Per Acre Rent Schedule, but was calculated using higher land values (unique zones) supported by appraisal data. In addition, over half of all bills generated for linear right-of-way grants in fiscal year 2007 were for multi-year periods of 2 years or more.

Interagency Coordination: The United States Department of Agriculture, Forest Service (FS), will adopt without rulemaking the revisions to the linear right-of-way rent schedule at 43 CFR 2806.20 promulgated by the BLM through this final rule. To enhance consistency between the BLM and the FS, the FS has indicated that it will incorporate some of the procedural or otherwise nonsubstantive changes into its directive system. The FS will be publishing a notice of its adoption of BLM's rental schedule pursuant to this rule and its incorporation of other changes in subpart 2806.

II. Final Rule as Adopted and Response to Comments

Part 2800 Rights-of-Way Under FLPMA

The BLM is amending the Per Acre Rent Schedule in its right-of-way regulations in 43 CFR parts 2800 and 2880. The rent schedule covers most linear rights-of-way granted under Title V of FLPMA and Section 28 of the MLA. These laws require the holder of a right-of-way grant to pay annually, in advance, the fair market value to occupy, use, or traverse public lands for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches.

As mentioned above, the Act directs the Secretary of the Interior to update the per acre rent schedule in the BLM's previous regulations at 43 CFR 2806.20. The Act specifically requires that the BLM revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone. The Per Acre Rent Schedule applies to linear rights-of-way the BLM issues under 43 CFR parts 2800 and 2880. So as not to be redundant, we discuss the components and application of the rent schedule primarily in part 2800 and will not repeat those discussions in part 2880. However, we will note any differences in part 2880 that are necessary based upon specific statutory provisions of the MLA.

In addition to revising the Per Acre Rent Schedule, the final rule makes minor amendments to parts 2800 and 2880 to bring the previous regulations into compliance with the statutory rent schedule changes. Finally, there are a number of minor corrections and changes in the final rule that are not directly related to the rent schedule. These changes are limited in scope and address trespass and the new rental payments, land status changes, annual rental payments, MLA hardship provisions, and reimbursements of monitoring costs and processing fees. These latter items correct some errors in the previous regulations and clarify others. This final rule:

(1) Makes clear that the rent exemptions listed in section 2806.14 do not apply if the applicant/holder is in trespass;

(2) Provides that only the Per Acre Rent Schedule will be used to determine rent for linear right-of-way grants, unless the land encumbered by the grant is to be transferred out of Federal ownership;

(3) Provides for an annual rent payment term when the annual rent for non-individuals is $500 or more;

(4) Provides for a one-time rent payment for grants and easements when the land encumbered by the grant or easement is to be transferred out of Federal ownership;

(5) Provides for a limited phase-in provision to all holders for calendar year 2009, and, a possible additional phase-in period upon revision of the rent schedule under sections 2806.22(b) and 2885.19(a);

(6) Revises section 2920.6 to require reimbursement of processing and monitoring costs under sections 2804.14 and 2805.16 for applications for leases and permits issued under Title III of FLPMA;

(7) Amends section 2920.8(b) to assess a non-refundable processing fee and monitoring fee under sections 2804.14 and 2805.16 for each request for renewal, transfer, or assignment of a lease or easement;

(8) Amends sections 2805.11(b)(2) and 2885.11(a) so that all grants, except those issued for a term of 3 years or less and those issued in perpetuity under

FLPMA, expire on December 31 of the final year of the grant; and

(9) Amends sections 2805.14(f) and 2885.12(e) to make it clear that you may assign your grant, without the BLM's prior written approval, if your authorization so provides.

We received many comments on the proposed rule that addressed issues common to both the part 2800 and part 2880 regulations. So as not to be redundant, we address the comments only in the section they pertain to in the part 2800 regulations. Comments that specifically address the part 2880 regulations are discussed in that section of the preamble.

Subpart 2805—Terms and Conditions of Grants

The BLM is making two minor amendments in 2 sections in subpart 2805, which addresses the terms and conditions of FLPMA right-of-way authorizations.

Section 2805.11 What does a grant contain?

Previous section 2805.11(b)(2) stated that all grants, except those issued for a term of less than 1 year and those issued in perpetuity, expire on December 31 of the final year of the grant. The BLM uses the calendar year, not the fiscal year or the anniversary date, to establish the rental period for grants. Expiration of grants on December 31 allows for consistency and ease of administration, because after the initial billing period only full calendar years are included in subsequent billing periods. However, the BLM often issues short-term right-of-way grants for 3 years or less to allow the holder to conduct temporary activities on public land. Previous section 2806.23(b) and final section 2806.24(c) both explain that the BLM considers the first partial calendar year in the rent payment period to be the first year of the rental term. Therefore, under previous section 2805.11(b)(2), a 3-year grant actually had a term period of 2 years plus the time period remaining in the calendar year of issuance. A 2-year grant had a term period of 1 year plus the time period remaining in the calendar year of issuance. Depending on when the grant was issued, the actual term could have been just over 2 years for a 3-year grant and could have been just over 1 year for a 2-year grant. Under the final rule, all grants, except those issued for a term of 3 years or less and those issued in perpetuity, expire on December 31 of the final year of the grant. The changes to this section allow holders to use short-term grants for the full period of the grant. For example, if a 3-year grant is issued under the final rule on October 1, 2008, it would expire on September 30, 2011, instead of December 31, 2010, under the previous rule. If a 2-year grant is issued under the final rule on October 1, 2008, it expires on September 30, 2010, instead of December 31, 2009, under the previous rule. In most cases, the BLM would assess a one-time rental bill for the term of the grant, which would reduce any administrative impact which might otherwise result from this change. We received no comments on the proposed changes to this section, and the final rule adopts the proposed section without change.

Section 2805.14 What rights does a grant convey?

Previous section 2805.14(f) stated that you had a right to assign your grant to another, provided that you obtained the BLM's prior written approval. The BLM proposed adding the phrase ''unless your grant specifically states that such approval is unnecessary'' at the end of this sentence to indicate that BLM's prior written approval may be unnecessary in certain cases. In most cases, assignments would continue to be subject to the BLM's written approval. However, with this change, the BLM could amend existing grants to allow future assignments without the BLM's prior written approval. This may be especially important to the future administration of a grant when the land encumbered by a grant is being transferred out of Federal ownership, and there is a request to convert an existing grant to an easement or a perpetual grant under section 2807.15(c). We received no comments on the proposed changes to this section and the final rule adopts the proposed section without change.

Subpart 2806—Rents

Sections 2806.10 through 2806.16 of subpart 2806 contain general rent provisions that apply to grants. No changes were proposed to these general provisions except to section 2806.14.

Section 2806.14 Under what circumstances am I exempt from paying rent?

Previous section 2806.14 identified those circumstances where a holder or facility is exempt from paying rent. None of the previous circumstances change under the final rule. We have, however, added a provision (final section 2806.14(b)) that states that the exemptions in this section do not apply if you are in trespass. The addition of this provision makes it clear that the penalties specified in subpart 2808—Trespass, which include the assessment of rent for use of the public land, and possible additional penalties based upon the rent value, apply to all entities in trespass, even those entities that may otherwise be exempt from paying rent under section 2806.14. This is consistent with how trespass penalties are assessed under current policy, and provides for consistency with similar provisions in subpart 2888—Trespass. Current section 2888.10(c) states that the BLM will administer trespass actions for MLA grants and temporary use permits (TUPs) as set forth in sections 2808.10(c) and 2808.11, except that the rental exemption provisions of part 2800 do not apply to grants issued under part 2880. Adding a new provision at section 2806.14(b) makes it clear that the rental exemption provisions do not apply to trespass situations covered under subpart 2808, as they likewise do not apply to trespass situations covered under subpart 2888. The final rule removes the existing phrase ''except that the rental exemption provisions of part 2800 (section 2806.14) do not apply to grants issued under this part'' from section 2888.10(c), because the cross reference is no longer necessary (see preamble discussion for proposed section 2888.10(c)). We received no comments on the proposed changes to this section and the final rule adopts the proposed section without change.

Section 2806.20 What is the rent for a linear right-of-way grant?

This section explains that the BLM will use the Per Acre Rent Schedule, except as described in section 2806.26, to calculate annual rent for linear right-of-way grants. The per acre rent from the schedule (for all types of linear right-of-way facilities regardless of the granting authority, e.g., FLPMA, MLA, and their predecessors) is the product of 4 factors: The per acre zone value multiplied by the encumbrance factor multiplied by the rate of return multiplied by the annual adjustment factor. The following discussion explains how the BLM adjusted these factors in the previous and proposed Per Acre Rent Schedule to arrive at the Per Acre Rent Schedule in the final rule, including the determination of per acre land values by county, as directed by the Act.

Use of a Schedule

Section 367 of the Act directs the Secretary of the Interior to ''revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone.'' Therefore, the final rule retains the use of a schedule

and no alternative rental fee options were considered.

County Land Values—Use of Published Data

In the 1987 rent schedule, the average per acre land value for each county was based upon a review of the typical per acre value for the types of lands that the BLM and the FS had allocated to various utility and right-of-way facilities. These values were mapped, reviewed, and adjusted, resulting in the placement of each county (except Coconino County, Arizona, which was split by the Colorado River) in one of eight zones ranging in value from $50 to $1,000 per acre.

In the ANPR, the BLM requested comments regarding what available published information, statistical data, or reports the BLM should use to update the current linear right-of-way rental fee zone values. The BLM stated in the ANPR that it was considering using existing published information or statistical data for updating the rent schedule, such as information published by the National Agricultural Statistics Service (NASS). The NASS publishes two reports:

(1) The Census of Agriculture, published every 5 years (NASS Census); and

(2) The annual Land Values and Cash Rents Summary (Annual Report).

The NASS Census provides average per acre land and building values by county, or other geographical areas, for each state. The land values are reported individually for cropland (including irrigated and non-irrigated cropland), woodland, pastureland, and rangeland, and an ''other'' category that includes non-commercial, non-residential building lots, wasteland, and land with roads and ponds. The average per acre land and building values do not include any value for the crop, forage, or woodland products produced from the land.

The NASS data in the Annual Report, as compared to the data in the NASS Census (see previous paragraph), includes average per acre values for cropland, pastureland, and farm real estate, but only on a regional or statewide basis, and not on a countywide basis. Another difference between the Annual Report and the NASS Census is the absence of any data for Alaska, Hawaii, and Puerto Rico in the Annual Report. You can find more detailed information about the NASS Census and the Annual Report at the NASS Web site at: *http://www.nass.usda.gov/index.asp.*

The BLM received four comments in response to our request in the ANPR for comment on the use of available published information. One commenter said that the NASS data is appropriate. Two commenters recommended using the NASS Census of Agriculture (5-year census) for county-level data. One commenter stated that the NASS data seems appropriate for updating the schedule, so long as agricultural uses are not reflected in the land values used.

In the development of the proposed rule, the BLM generally agreed with the commenters on the ANPR that supported the use of the NASS Census data to determine the average per acre value for each county, except for the commenter that supported its use so long as agricultural uses are not reflected in the land values used. The NASS publishes average per acre land and building values, by state and county, each 5-year period in its NASS Census report. The most recent county values are from the 2002 NASS Census, which was published in June 2004. The next NASS Census report will provide 2007 data, and it is due to be published in June 2009. However, the NASS county per acre land and building value data is reflective of the types of agricultural uses generally occurring in that county, including land value data reported for cropland (including irrigated and non-irrigated cropland), woodland, pastureland, and rangeland, and an ''other'' category that includes non-commercial, non-residential building lots, wasteland, and land with roads and ponds. Land administered by the BLM and FS have many of the same agricultural values (grazing, commercial timber production, woodland and vegetative sales (Christmas trees, firewood, mushrooms, pine nuts, seed crops from native species, etc.). The average per acre land and building values do not include any value for the crop, forage, or woodland product produced from the land. In the proposed rule, we further explained that other Federal and state agencies regularly use the NASS Census data when it is necessary to obtain average per acre land value for a particular state or county. In addition, Congress specifically endorsed the use of this data for rental determination purposes when it passed the ''National Forest Organizational Camp Fee Improvement Act of 2003'' (Pub. L. 108–7) (16 U.S.C. 6231). This law established a formula for determining rent for organizational camps located on NFS lands by applying a 5 percent rate of return to the average per acre land and building value, by state and county, as reported in the most recent NASS Census. That law also provided for a process to update the per acre land values annually based on the change in per acre land value, by county, from one census period to another. The law does not mandate the use of zones or a schedule, which eliminates the need for an annual index adjustment to keep the schedule or zones current. However, the range between the high and low county values which results from using the components mandated under Public Law 108–7, including the use of a 100 percent encumbrance factor, is significantly greater than the range between the high and low zone values which result from using the components established under either the proposed or final rule.

The proposed rule used the entire average per acre land and building value (by state and county) from the 2002 NASS Census to place the county or geographical area into the proper zone value in the rent schedule. We used the entire average per acre land and building value to be consistent with how Congress used the same data in determining annual per acre rent for organizational camps located on NFS lands as described above. We also used the entire per acre land and building value from the NASS Census because both BLM and FS lands have many of the same agricultural values reflected in the NASS Census data.

The BLM received several comments on the proposed rule's use of the entire average per acre land and building value (by state and county) from the NASS Census to place the county or geographical area into the proper zone value in the rent schedule. The majority of the commenters stated that the average per acre land and building value should be reduced to remove land with buildings or other improvements, but offered no recommendations on how this should be accomplished. Some of the commenters stated that irrigated cropland should also be removed from the average per acre land and building value, pointing out that in most cases the average per acre value of irrigated land is significantly higher than non-irrigated land. These commenters recommended reducing the average per acre land and building value in the NASS Census by 50 percent, but offered no data to support a 50 percent reduction, except to state that lands administered by the BLM and FS are not used for irrigated cropland production, nor do they contain rural farm buildings, and therefore, the average per acre land and building value should be reduced by at least 50 percent.

We agree that the average per acre land and building value for each county should be reduced by an amount that

reflects the value of irrigated cropland and land encumbered by buildings because BLM- and FS-administered lands do not include these land categories. The BLM consulted with officials from the NASS on an appropriate methodology to arrive at this figure. The NASS advised us that this calculation can be accomplished by comparing the total value of irrigated acres and acres in the ''other'' category, to the total value of all farmland acres. In 2002, there were a total of 938,300,000 acres of rural farmland, composed of 434,200,000 acres of cropland (50,300 acres irrigated); 395,300,000 acres of pasture/rangeland (5,000,000 acres irrigated); 75,900,000 acres of woodland; and 32,900,000 acres in an ''other'' category (roads, ponds, wasteland, and land encumbered by non-commercial/non-residential buildings). In 2007, the average per acre value of all land in all categories equaled $2,160 for a total farm real estate value of $2,026,728,000,000. This compares to an average per acre land value of $4,736 for all irrigated cropland (a total value of $261,900,000,000 for the 55.3 million acres of irrigated cropland) or approximately 12.9 percent of the total value of all farmland. Thus, to eliminate the irrigated cropland value from the average per acre land and building value of each county, a 13 percent reduction is necessary.

To determine a similar value for the ''building'' component of the average per acre land and building value is more difficult, since only the total number of acres in the ''other'' category is known (32.9 million acres, which includes acres encumbered by roads, ponds, non-commercial/non-residential buildings, and wastelands). In addition, unlike the average per acre values that have been determined by NASS for pastureland/rangeland ($1,160), all cropland ($2,700), irrigated cropland ($4,736) and all farm real estate ($2,160), the average per acre value for the ''other'' category is not available. However, since the lands in this category are basically non-productive, their average per acre value is likely less than the average per acre value for pastureland/rangeland ($1,160). Even so, if all 32.9 million acres were valued at $1,160 per acre, the total value of all lands in the ''other'' category would equal $38,164,000,000, or less than 2 percent of the total value of all farm real estate. If all lands in the ''other'' category are valued the same as irrigated cropland ($4,736), their total value would still only be 7.7 percent of all farm real estate. Therefore, in the final rule we reduced the average per acre land and building value by 20 percent (a 13 percent reduction for all irrigated acres and a 7 percent reduction for all lands in the ''other'' category which includes all improved land or land encumbered by buildings) to eliminate the value of all land that could possibly be encumbered by buildings or which could possibly have been developed, improved, or irrigated.

One commenter suggested that the value for non-irrigated cropland should also be deleted from the average per acre land and building value because of its commercial nature and its dissimilarity to public and NFS lands. The BLM disagrees with this comment. In the 2007 Annual Report, the NASS provided the average value per acre of non-irrigated land in 20 states, including most of the states in the west with large acreages of public and NFS lands, except for the states of Arizona and Nevada where there is very little cropland that is not irrigated. The average value per acre of non-irrigated land is $1,963, and the average value per acre of pasture land in these same 20 states (excluding Arizona and Nevada) is $1,976. If the average per acre pastureland values were included for Arizona and Nevada, the average value per acre of pasture land for all 22 states is $1,926. Thus, there is little difference in the mid-western and western states between the average per acre values of non-irrigated cropland and pastureland/rangeland. In the eastern United States, Federal land holdings, including NFS lands, have largely been acquired from the private sector (primarily farm real estate) and would likely fall into the same land categories covered by the NASS Census. As a result, no further reductions to the average per acre land and building value (other than the 20 percent reduction discussed above for irrigated lands and buildings) are made in the final rule.

In the ANPR the BLM requested comments regarding whether the proposed Per Acre Rent Schedule should split some states and counties into more than one zone. The BLM received three ANPR comments addressing whether some counties should be split into more than one zone. One commenter said that any consideration of splitting states or counties into more than one zone should involve discussions with stakeholders. One commenter said that zones smaller than a single county may lead to undue administrative burden for the BLM (establishing boundaries and collecting data). For very high-valued lands, rent could be based on 25 percent of the assessed value, according to one commenter. Alternatively, high-valued BLM lands could be sold or exchanged. One commenter said that wide variations in land values within a state or county may require applying the zone methodology at the sub-state or sub-county level. In the proposed rule, the BLM did not split any county into more than one zone because there was no published data, easily obtainable, that would support making such a split. We received one comment on the proposed rule suggesting that multiple zones be established where land values vary greatly within a single county. However, the commenter did not indicate how such variations in land values could be easily obtained or identified within each county entity. The BLM believes that it is not possible to make easy or accurate determinations of variations in land values within each county, and therefore the final rule does not split any county into more than one zone.

The BLM also requested in the ANPR comments regarding whether the proposed Per Acre Rent Schedule should apply to Alaska. One commenter stated that the new linear right-of-way rent schedule should apply to public and NFS lands in Alaska if similar published data for land values is available for Alaska as for the lower 48 states and the data produces a reasonable per acre rental value. As a result, we proposed that the schedule apply to Alaska since the NASS Census does include average per acre land and building values for 5 Alaska areas: Fairbanks; Anchorage; Kenai Peninsula; Aleutian Islands; and Juneau. These NASS data produce a reasonable per acre rental value and are comparable to the per acre rental values from contracted appraisals and/or local rent schedules now in effect in some BLM and FS offices. The NASS Census data does not define the actual boundaries for the 5 areas, and therefore we specifically asked for comments to assist the BLM and the FS in determining and identifying the on-the-ground area to be included in each of the 5 Alaska areas in the NASS Census. For example, the NASS Census average per acre land and building value for the Fairbanks ''area'' could be used for all public lands administered by the BLM Fairbanks District Office and the NASS Census average per acre land and building value for the Anchorage ''area'' could apply to all public lands administered by the BLM Anchorage District Office, and so forth. Another approach, which both the BLM and the FS prefer, would be to identify specific geographic or management areas and apply the most appropriate per acre land and building value from the 5 Alaska NASS Census areas to the BLM/FS identified

geographic or management areas based on similar landscapes and/or similar average per acre land values. The proposed rule stated that the FS planned to use the NASS census data for the Kenai Peninsula for all NFS lands in Alaska, except for NFS lands located in the Anchorage and Juneau areas. For NFS lands located in the Municipality of Anchorage, the NASS Census data for the Anchorage area would apply. For NFS lands in the downtown Juneau area (Juneau voting precincts 1, 2, and 3), the NASS Census data for the Juneau area would apply.

The BLM received 2 comments on how the NASS Census data should be applied to public and NFS lands in Alaska. Both commenters generally supported the methodology of the proposed per acre rent schedule (with minor exceptions), but varied slightly in the geographical application of the five NASS Census areas for Alaska. One commenter agreed with the proposal of using the NASS Census data for the Kenai Peninsula for all NFS lands in Alaska, except for NFS lands located in the Anchorage and Juneau area. The commenter stated that for NFS lands located in the Municipality of Anchorage, the NASS Census data for the Anchorage area should apply, and for NFS lands in the downtown Juneau area, the NASS Census data for the Juneau area should apply. For the BLM, the commenter proposed that the NASS Census data for the Kenai Peninsula (Zone 4) apply to all public lands within the BLM Anchorage District boundaries, except for public lands in the Anchorage (Zone 6 in the proposed rule; Zone 5 in the final rule due to the 20 percent reduction in the average per acre land and building value—see discussion above), Juneau (Zone 11), and the Aleutian Island Chain (Zone 1) areas. The commenter said that for public lands located in the Municipality of Anchorage, the NASS Census data for the Anchorage area (Zone 5 in the final rule) should apply and for public lands in the downtown Juneau area (Juneau voting precincts 1,2, and 3), the NASS Census data for the Juneau area (Zone 11) should apply. For public lands in the Aleutian Island Chain, the NASS Census data for the Aleutian Islands Area (Zone 1) should apply. In addition, the NASS Census data for the Fairbanks Area (Zone 3) should apply to all public lands within the BLM Fairbanks District boundaries. The commenter stated that these zone definitions and values would be consistent with both the suggestion in the proposed rule and the general fee schedule previously developed by the Appraisal Services Directorate (ASD), Alaska, for the BLM and the United States Fish and Wildlife Service. The BLM agrees with the commenter's suggestions because these zone definitions and values closely match previous rent schedules/values developed by the ASD for these same geographical areas. Therefore, in the final rule the BLM will apply the NASS Census data for Alaska to the geographical and administrative areas as follows:

Aleutian Islands Area—all lands within the Aleutian Islands Chain—Zone 1;

Fairbanks Area—all lands within the BLM Fairbanks District boundaries—Zone 3;

Kenai Peninsula Area—all lands within the BLM Anchorage District boundaries excluding the Aleutian Islands Chain, the Anchorage Area, and the Juneau Area—Zone 4;

Anchorage Area—all lands within the Municipality of Anchorage—Zone 5; and

Juneau Area—all lands within downtown Juneau (Juneau voting precincts 1, 2 and 3)—Zone 11.

The second commenter, while disagreeing with some of the individual elements in the formula, stated that the rent formula, when taken as a whole, is well structured and should be extended, as described, to Alaska. This commenter did note, however, that the 2002 appraisal completed for the Trans-Alaska Pipeline System (TAPS) right-of-way set a $391 per acre land value for Federal lands north of the Yukon River and suggested that the BLM use this as justification to place these lands into Zone 2 instead of Zone 3, as proposed. We do not dispute the per acre value of Federal lands north of the Yukon River as determined by the 2002 TAPS appraisal. We do, however, note that in arriving at an annual per acre rental value for these lands, the 2002 TAPS appraisal utilized an encumbrance factor of 100 percent (later reduced to approximately 86.49 percent) and an 8 percent rate of return. When taken together, these components of the TAPS appraisal produced an annual per acre rental value of approximately $31 (later reduced to $27) for Federal lands north of the Yukon River and an average per acre rental value of approximately $35 (later reduced to $30) for all Federal lands along the TAPS corridor. In comparison, the proposed rent schedule would have generated an annual per acre rental value of $32.35 in 2002, while the final rule would have generated $26.35. Therefore, the BLM agrees with the commenter, that while issue can be taken with individual elements of the final per acre rent schedule, when taken as a whole, the schedule is well constructed and produces a reasonable per acre rent for all zones. In the final rule, the TAPS will be assessed Zone 3 rates for all public land acres within the BLM Fairbanks District boundaries, and Zone 4 rates for all public land and NFS land acres within the BLM Anchorage District boundaries and the Chugach National Forest.

Puerto Rico, which has no public lands administered by the BLM, is not divided into counties. However, the NASS publishes average farmland values for the entire Commonwealth of Puerto Rico. The proposed rule stated that the FS planned to use the NASS average farmland values ($5,866 per acre in 2002) for linear right-of-way authorizations located on NFS lands in Puerto Rico. The BLM included this same amount ($5,866 per acre in 2002) for Puerto Rico in the proposed rule for use by the BLM in the event that the BLM were to issue and administer future linear authorizations in Puerto Rico (for example, a MLA grant which involved lands administered by two or more Federal agencies could be issued/administered by the BLM). We received no comments on this issue and made no changes to the final rule.

Per Acre Zone Values

The 1987 linear rent schedule contained eight separate zones representing average per acre land value from $50 per acre to a $1,000 per acre. The schedule contained two zones with a $50 range, five zones with a $100 range, and one zone with a $400 range. All the counties in the 48 contiguous states, except one, and Puerto Rico were in one of the eight zones based on their estimated average per acre land value. The lone exception was Coconino County, Arizona, where the area north of the Colorado River was in one zone, and the area south of the river was in a different zone.

In the ANPR, the BLM requested comments regarding the appropriate number of rental zones for the revised rent schedule, and received three comments. One commenter said that the number of zones (8) in the current schedule is sufficient. Two commenters said that the number of zones should not be changed, unless the NASS Census data indicates the need for a change.

In the proposed rule, the number of zones was increased from the previous 8 to 12 in order to accommodate the range of 3,080 county land values contained in the NASS Census. For the same reason, it was necessary to increase the dollar value per zone. In

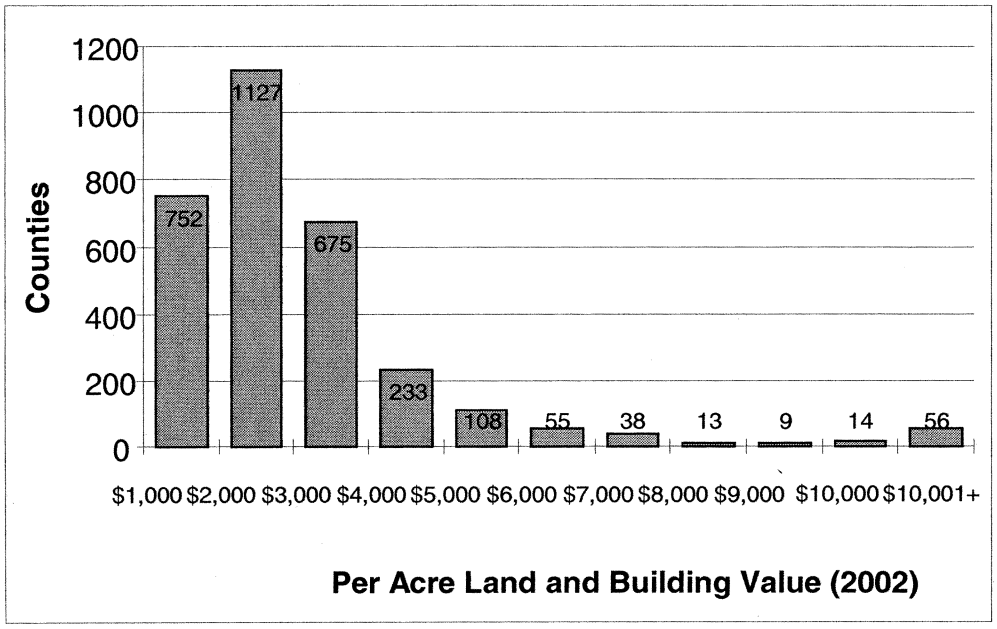
the 2002 NASS Census, the county land and building value per acre ranged from a low of $75 to a high of $98,954. To accommodate such a wide range in average per acre land values, the BLM proposed 2 zones with $250 increments, 3 zones with $500 increments, 1 zone with a $1,000 increment, 1 zone with a $2,000 increment, 1 zone with a $5,000 increment, 2 zones with $10,000 increments, 1 zone with a $20,000 increment, and 1 zone with a $50,000 increment (see Table 2—Zone Thresholds).

TABLE 2—ZONE THRESHOLDS

Zone	2002 county land and building value
Zone 1	$1 to $250.
Zone 2	$251 to $500.
Zone 3	$501 to $1,000.
Zone 4	$1,001 to $1,500.
Zone 5	$1,501 to $2,000.
Zone 6	$2,001 to $3,000.
Zone 7	$3,001 to $5,000.
Zone 8	$5,001 to $10,000.
Zone 9	$10,001 to $20,000.
Zone 10	$20,001 to $30,000.
Zone 11	$30,001 to $50,000.
Zone 12	$50,001 to $100,000.

The proposed rule's zones accommodate the per acre land and building values of 100 percent of the total number of counties in the 2002 NASS Census (see Table 3). As land values increase or decrease, it may be necessary to adjust the number of zones and/or the dollar value per zone. The proposed rule allowed adjustments to the number of zones and/or the dollar value per zone after the publication of every other NASS Census (once each ten-year period). The adjustments must accommodate 100 percent of the county per acre land and building values reflected in the 5-Year Census. In the proposed rule, the BLM specifically asked for comments on whether 100 percent of the counties should be covered by the per acre rent schedule.

Table 3 – Distribution of U.S. Counties by 2002 Per Acre Land and Building Value



The BLM received several comments that supported the number of zones, the zone values, and the placement of all NASS counties within the appropriate zone value. One commenter encouraged the BLM and the FS to verify that the zone values reflect actual undeveloped, non-irrigated land values in rural areas of the country adjacent to the public and NFS lands, to ensure that the land values within each zone are appropriate, and the zones assigned to different counties are accurate. We believe that we have addressed this concern by removing all irrigated land and land encumbered by buildings from the calculation of land value and reducing the average per acre land and building values by 20 percent from those shown in the proposed rule. Even with this reduction, we do not believe that the number of zones or the zone values require adjustment. There are still several counties that would fall into Zone 12, even with the 20 percent reduction.

Another commenter suggested that the BLM should discard the zone brackets entirely and use the actual NASS Census land and building value for each county. The BLM considered this option in the development of the proposed rule, but did not believe it conformed to the Congressional mandate provided in Section 367 of the Act to revise the existing schedule by state, county, and type of uses to reflect current land values in each zone. The commenter also suggested that in lieu of using the actual NASS Census value for each county, the BLM should utilize the midpoint of the zone value to base its calculations instead of the upper limit value of each zone. Again, the BLM considered this option in the development of the proposed rule, but did not adopt it because this calculation change would have been significantly different from the methodology used in the previous schedule (which utilized the upper zone amount and not the midpoint in making the per acre rental calculations) and its use would have generated significantly lower per acre rent amounts, while land values have generally increased. As a result, we made no adjustments to the number of zones in the final rent schedule, the zone amounts, or the methodology used

in the calculation of the per acre rent for each zone.

The 2002 NASS Census per acre land and building value for each county (or similar area) and the corresponding zone number in the Per Acre Rent Schedule (based on 80 percent of the 2002 NASS Census per acre land and building value for each county) are listed for informational purposes at the end of this final rule. Most of the areas subject to the Per Acre Rent Schedule are called ''counties.'' Exceptions include Alaska ''areas,'' the ''Commonwealth'' of Puerto Rico, and Louisiana ''parishes.'' To make the terminology uniform in this rule, all such areas are referred to as counties.

Encumbrance Factor

The BLM proposed an encumbrance factor (EF) of 50 percent for all types of linear right-of-way facilities. This is a change from the previous rule where the EF for roads and energy-related pipelines and other facilities was 80 percent and the EF for telephone and electrical transmission facilities was 70 percent. The proposed change is the result of public comments on the ANPR, a review of industry practices in the private sector, and a review of the Department of the Interior (DOI) appraisal methodology for right-of-way facilities located on Federal lands.

The EF is a measure of the degree that a particular type of facility encumbers the right-of-way area or excludes other types of land uses. If the EF is 100 percent, the right-of-way facility (and its operation) is encumbering the right-of-way area to the exclusion of all other uses. The land use rent for such a facility would be calculated on the full value of the subject land (annual rent = full value of land X rate of return). If the EF is 40 percent, the right-of-way facility (and its operation) is only partially encumbering the right-of-way area so that other uses could co-exist alongside the right-of-way facility. The land use rent for such a facility would be calculated on only 40 percent of the full value of the subject land (annual rent = full value of land × 40 percent × rate of return).

Two comments received on the ANPR on this topic suggested that an EF could be as low as 10–15 percent if the right-of-way facility is located on undevelopable terrain; a 25 percent EF be used for a transmission line that does not affect development of land (''set-back areas''); a 50 percent EF be used if development is restricted, but not prohibited, or if other land uses are still possible; and a 70 percent EF be used if development or other uses are severely restricted. Another ANPR commenter stated that the EF should be lowered to 25–50 percent for power lines, because in the private sector, an electrical utility typically makes a one-time payment of 50 percent fair market land value for a perpetual easement, allowing other use(s) within the corridor as long as the use(s) do not interfere with the power line. The commenter also stated that most of the uses that the BLM authorizes can also be conducted within a power line corridor without interfering with the power line and without restricting the additional use. One ANPR commenter encouraged the BLM to use a lower EF than 70 percent, based on common real estate practice relating to utility easements. The commenter stated that when utilities negotiate the purchase price for easements on private land, they typically apply a factor of 50 percent or less to the fee simple value of the land involved, to reflect that the utility easement is less than fee ownership and has a reduced impact. This commenter further stated that the BLM should use a 50 percent or lower encumbrance (impact adjustment) factor and should allow a right-of-way applicant to demonstrate that an even lower impact factor should apply.

In preparing the proposed rule, the BLM reviewed several appraisal reports (prepared by the DOI's Appraisal Services Directorate) for right-of-way facilities located on Federal lands. These appraisal reports showed an EF ranging from 25 percent (for buried telephone lines) to 100 percent (for major oil pipelines and electrical transmission lines). The BLM also reviewed one appraisal report that was prepared by a contractor for the BLM. The contractor did an independent solicitation of industry practices regarding this factor and again found anecdotal evidence that EFs vary from 25 percent to 100 percent, with 50 to 75 percent being the most common. One holder provided anecdotal evidence that its company typically used a 40 percent EF for buried facilities and a 60 percent EF for above ground facilities when negotiating land use rental terms for its facilities across private lands. One BLM grant-holder contracted with a private appraisal firm to determine an appropriate EF for a major pipeline and found that a 75 percent EF is fairly typical for major projects. Finally, our review showed that many state and Federal agencies have established an EF by statute or by policy, usually in the 70 percent to 100 percent range. In the proposed rule, the BLM specifically asked for comments regarding the proposed use of a 50 percent EF, especially since this was a reduction from the 80 percent and 70 percent EFs used in the previous per acre rent schedule.

We received many comments on the proposed rule supporting the reduction of the EF to 50 percent from the 80 percent and 70 percent in the previous per acre rent schedule. A few commenters specifically stated that the EF should be limited in all cases to no higher than 50 percent. One commenter stated that the BLM has traditionally appraised the acquisition of non-exclusive road easements (the equivalent of a BLM right-of-way) using a 50 percent encumbrance factor and that a maximum 50 percent EF should be used whether or not the EF is applied to the upper limit of each zone value or the mid-point value of each zone. One commenter suggested that the EF should be reduced to as little as 10 percent, arguing that a transmission facility located on public lands devalues the land much less than would an easement on private land and that the rights obtained under a grant are also less than those obtained under an easement. Another commenter, while supporting an EF of 50 percent, believed that the final rule should provide holders the option to seek lower EFs via an appraisal. In addition, one commenter suggested that the EF be reduced below 50 percent in those cases where a new right-of-way is granted within an existing road right-of-way or patent reservation for roads or utility purposes.

The BLM agrees with the commenters that state that there are situations and circumstances where an EF of less than 50 percent may be appropriate, whether due to the type of facility, the rights obtained or granted, the impact of the facility on the land, or the co-location of multiple facilities within the same utility corridor. However, there is convincing evidence of situations where an EF greater than 50 percent is warranted. In fact, for large right-of-way facilities, such as interstate pipelines and electrical transmission lines greater than 138 kilovolts in size, the annual rent or one-time easement payment is typically determined using 100 percent of the land value (100 percent EF). These major right-of-way facilities not only encumber the greatest number of acres, but can have significant and continuing impacts on public land resources, including impacts to visual, open space, wildlife, vegetative, cultural, recreation, and other public land resources. In addition to the documented cases cited above supporting EFs greater than 50 percent, two articles published in a professional right-of-way journal also show that a 50

percent EF is indicative of a balanced-use by both the land owner and right-of-way/easement holder (see Donald Sherwood, Easement Valuation, *Right-of-Way Magazine*, May/June 2006 at 33). More telling are several quotes from utility company officials stating that the typical amount of compensation for permanent easements is 50 percent of the underlying land value, but that this amount can increase up to 100 percent depending on the size of the transmission line or right-of-way facility being sited (see William R. Lang and Brett A. Smith, Valuing a Gas Pipeline Easement, *Right-of-Way Magazine*, September/October 1998 at 32). The BLM recognizes that the EF is closely related to the type of right-of-way facility authorized, as well as how it is operated and administered. However, to assign a specific EF for each type of facility, or type of terrain, or to allow the holder the option of completing an appraisal that may establish a lower EF would be counter-productive to the purpose of using a schedule in the first place, i.e., administrative simplicity and the cost savings that a schedule provides to both the BLM and the applicant/holder in determining rent for right-of-way facilities on public lands. (We note that under this final rule the holder has the option to complete an appraisal report to determine one-time rent for perpetual grants or easements under sections 2806.25, 2806.26, and 2885.22. In these cases, involving lands to be transferred out of Federal ownership, the appraisal report could establish an EF lower than 50 percent (see section 2806.25(d)). In determining an appropriate EF for the final rule, the BLM has also given consideration to the fact that the BLM grants rights-of-way for a specified term, usually 20 to 30 years and that the rights granted are subject to renewal, relinquishment, abandonment, termination, or modification during the term of the grant. We also recognize that the grants issued for right-of-way facilities are non-exclusive, i.e., the BLM reserves the right to authorize other uses within a right-of-way area, as long as the uses are compatible. Given these considerations, and the research and analysis cited above, along with consideration of public comments and published information, the BLM has determined that a 50 percent EF is a reasonable and appropriate component for use in the rent formula for linear right-of-way facilities located on public lands.

Rate of Return

The rate of return component used in the Per Acre Rent Schedule reflects the relationship of income to property value, as modified by any adjustments to property value, such as the EF discussed above. The BLM reviewed a number of appraisal reports that indicated that the rate of return for land can vary from 7 to 12 percent, and is typically around 10 percent. These rates take into account certain risk considerations, *i.e.*, the possibility of not receiving or losing future income benefits, and do not normally include an allowance for inflation. However, a holder seeking a right-of-way from the BLM must show that it is financially able to construct and operate the facility. In addition, the BLM can require surety or performance bonds from the holder to ensure compliance with the terms and conditions of the authorization, including any rental obligations. This reduces the risk and should allow the BLM to use a ''safe rate of return'' *e.g.*, the prevailing rate on insured savings accounts or guaranteed government securities that include an allowance for inflation.

The rate of return for the previous rent schedule was 6.41 percent, which was the 1-year Treasury Securities ''Constant Maturity'' rate for June 30, 1986. In response to the ANPR, two commenters stated that this rate of return is an acceptable rate of return for right-of-way uses on public lands. Another ANPR commenter stated that the Treasury-bill (T-bill) rate of 6.41 percent in the current rent schedule is not unreasonably high given current T-bill rates around 5 percent. This commenter also stated that an annual adjustment of the T-bill rate would lead to uncertainty in rental fees, which would have a negative impact on utilities and customers, and duplicates the changes reflected in the Gross Domestic Product (GDP) index. Land values tend to move opposite to the T-bill rate, the commenter noted, so including this update in the formula would lead to overly-large rental rates. According to this commenter, a better approach would be to use the 10-year average of the 1-year T-bill rates. Three commenters supported updating the rate of return annually, using some multi-year average of the 1-year T-bill rates. The ANPR commenters said that this approach would provide for a current rate of return, while avoiding abrupt changes.

Given the above considerations, the BLM proposed that an initial rate of return based on the 10-year average (1992–2001) of the U.S. 30-year Treasury bond yield rate would be reasonable since most right-of-way authorizations are issued for a term of 30 years. The BLM chose the 10-year period from 1992–2001 since it was the 10-year period immediately preceding the establishment of the 2002 base rent schedule. The ''initial'' rate in the proposed rule (6.47 percent) would have been effective through 2011, and then would have adjusted automatically to the then-existing 10-year average (2002–2011) of the U.S. 30-year Treasury bond yield rate. This method of establishing the rate of return eliminates a ''one-point-in-time'' high or low rate with a rate that reflects an average over the preceding decade. The proposed rule would have allowed for use of the 10-year average of the U.S. 20-year Treasury bond yield rate if the 30-year U.S. Treasury bond yield rate were not available. In the proposed rule, the BLM specifically asked for comment regarding the method that we proposed to establish the initial rate of return and how we proposed to update it every ten years.

We received several comments in support of the proposed 6.47 percent rate of return and the use of the 10-year average of the U.S. 30-year Treasury bond yield rate to establish the initial rate of return. However, two commenters suggested using more current rates: One recommended using the one-year Treasury bill rate, while the other recommended using the most current 30-year Treasury bond yield. The BLM agrees that we should use the most current rates, so that the rate of return reflects the most recent value of money, but a 10-year average is more appropriate than a rate selected from one point in time. As a result, in the final rule, the BLM revised the rate of return downward from 6.47 percent (the 10-year average from 1992 to 2001 of the 30-year Treasury bond yield) to 5.27 percent, which is the most current 10-year average (1998–2008) of the 30-year and 20-year Treasury bond yield rate.

The BLM also agrees with the commenter who stated that a periodic adjustment of the T-bill rate, as proposed in section 2806.22(c), would lead to uncertainty in rental fees, which would have a negative impact on utilities and customers and duplicate the changes reflected in the GDP index. The commenter stated that land values tend to move in opposite directions to the T-bill rate, so including this variable in the formula could lead to overly-large rental rate increases when compared to other economic forces, instead of reflecting current land values as directed by the Act. The BLM agrees and since the rate of return is established by this rule, we will not adjust the 5.27 percent rate of return in the final rule except through new rulemaking.

2002 (Base Year) Per Acre Rent Schedule

Based upon the above discussion establishing the final per acre zone values, encumbrance factor, and rate of return, the Per Acre Rent Schedule for the base year, calendar year 2002, is shown in Table 4:

TABLE 4—2002 PER ACRE RENT SCHEDULE

County zone number and per acre zone value	Encumbrance factor (percent)	Rate of return (percent)	Per acre rent for all types of linear right-of-way facilities issued under either FLPMA or MLA or their predecessors. To be adjusted annually for changes in the IPD–GDP
Zone 1 $250	50	5.27	$6.59
Zone 2 $500	50	5.27	13.18
Zone 3 $1,000	50	5.27	26.35
Zone 4 $1,500	50	5.27	39.53
Zone 5 $2,000	50	5.27	52.70
Zone 6 $3,000	50	5.27	79.05
Zone 7 $5,000	50	5.27	131.75
Zone 8 $10,000	50	5.27	263.50
Zone 9 $20,000	50	5.27	527.00
Zone 10 $30,000	50	5.27	790.50
Zone 11 $50,000	50	5.27	1,317.50
Zone 12 $100,000	50	5.27	2,635.00

As discussed above, the most recent NASS Census data available is for calendar year 2002 and those data, in conjunction with the final per acre zone values, encumbrance factor, and rate of return, are used to develop the initial or base Per Acre Rent Schedule. In summary, final section 2806.20 explains that the base 2002 Per Acre Rent Schedule will be adjusted annually in accordance with section 2806.22(a) and revised at the end of each 10-year period (starting with the base year of 2002) in accordance with section 2806.22(b). These adjustments to the 2002 Per Acre Rent Schedule, as well as the Per Acre Rent Schedule for calendar years 2008 through 2015, are discussed below.

Section 2806.20 further explains that counties (or other geographical areas) would be assigned toan appropriate zone under section 2806.21. The reference to proposed section 2806.22(c) has been removed from final section 2806.20 because proposed section 2806.22(c) has not been adopted in the final rule. Proposed section 2806.22(c) allowed for the rate of return to be adjusted at the end of each 10-year period. In the final rule, the rate of return will remain at 5.27 percent unless revised through new rulemaking. The reasons for this change are provided in the ''Rate of Return'' section above, as well as in final section 2806.22 below.

Finally, section 2806.20 explains that you may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.* Because current schedules are easily available, the BLM does not intend to publish an updated Per Acre Rent Schedule each year in the **Federal Register**.

Section 2806.21 When and how are counties or other geographical areas assigned to a County Zone Number and Per Acre Zone Value?

This section explains that counties (or other geographical areas) are assigned a county zone number and per acre zone value in the Per Acre Rent Schedule based upon 80 percent of their per acre land and building value published in the Census of Agriculture by the NASS (see discussion above regarding this 80 percent figure). The initial assignment of counties to the zones will cover years 2006 through 2010 of the Per Acre Rent Schedule and is based on data contained in the most recent NASS Census (2002). We use the year 2006 as the initial year for the assignment of counties because it takes 18 months for the NASS to compile and publish Census data, and in the final rule we provide 18 months of advanced notice prior to any possible re-assignment of counties using new NASS Census data (for a total of 3 years). Therefore, the initial assignment of counties based on the 2002 NASS Census data could not have occurred until 2006. For example, San Juan County, New Mexico, has a 2002 NASS Census per acre land and building value of $324. Since 80 percent of this amount ($259) falls between $251 and $500, San Juan County is assigned to Zone 2 on the Per Acre Rent Schedule for the 5-year time period from 2006 through 2010. This section also explains that subsequent re-assignments of counties are possible every 5 years (2011, 2016, 2021, 2026, and so forth) following the publication of the NASS Census.

As discussed previously, we received many comments requesting a reduction in the NASS Census per acre land and building value. However, several commenters also stated that the re-assignment of counties each five-year period with less than one year's notice would expose utility and pipeline companies to frequent and potentially unpredictable fee adjustments. Other commenters stated that utility companies needed more advance notice of any re-assignment of counties to new zones on the rent schedule than the proposed rule allowed (less than one year) to allow adequate planning, budgeting, and recovery of costs associated with potentially large fee increases. The BLM agrees with the commenters that it is reasonable to allow additional time between the publication of the NASS Census data and any re-assignment of counties to their proper rental zones to allow companies to adjust budgets and recover

costs associated with the increases. We considered several time periods (from 1 to 5 additional years) and concluded that 1 additional year is sufficient advance notice to plan, budget, and recover any additional costs associated with the re-assignment of counties. As a result, we used the year 2006 as the initial year for the assignment of counties based on the 2002 NASS Census data (see above discussion). Likewise, the next scheduled NASS Census will be for calendar year 2007, but the data will not be published until approximately June 2009. Any re-assignment of the counties under the proposed rule would have occurred in rental year 2010. However, in the final rule, the re-assignment of counties will occur in year 2011, providing a full 18 months of notice as compared to only 6 months of advance notice under the proposed rule. For example, if 80 percent of the average per acre land and building value of San Juan County stays between $251 and $500 in the 2007 NASS Census, San Juan County would remain in Zone 2 on the Per Acre Rent Schedule for calendar years 2011 through 2015. However, if 80 percent of the average per acre land and building value were to drop to $240, San Juan County would be re-assigned to Zone 1 on the Per Acre Rent Schedule for calendar years 2011 through 2015, instead of calendar years 2010 through 2014, as proposed. Likewise, if 80 percent of the average per acre land and building value were to increase to $640, San Juan County would be re-assigned to Zone 3 on the Per Acre Rent Schedule for calendar years 2011 through 2015.

In summary, we revised proposed section 2806.21 in the final rule to account for the assignment of counties into the zones on the linear rent schedule based on 80 percent of the average per acre land and building value contained in the NASS Census, instead of 100 percent. In addition, the re-assignment of counties to the zones in the per acre rent schedule has been delayed by one year (as discussed above) to provide adequate time for holders to budget and recover any additional costs that may result from being placed into a higher zone based upon new NASS Census data each five-year period.

The adjusted 2002 NASS Census per acre land and building value for each county and the corresponding zone number in the Per Acre Rent Schedule (based on 80 percent of the NASS Census data) are listed for informational purposes at the end of this final rule.

Section 2806.22 When and how does the Per Acre Rent Schedule change?

This section explains that the BLM will adjust the per acre rent in section 2806.20 for all types of linear right-of-way facilities in each zone each calendar year based on the average annual change in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) for the 10-year period immediately preceding the year that the NASS Census data becomes available. For example, the average annual change in the IPD–GDP from 1994 to 2003 (the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available) is 1.9 percent. This annual adjustment factor is applied to years 2006 through 2015 of the Per Acre Rent Schedule to coincide with the time periods that counties are assigned a county zone number and per acre zone value in the Per Acre Rent Schedule based first on the 2002 NASS Census data (2006–2010) and secondly, on the 2007 NASS Census data (2011–2015). Likewise, the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) will be applied to years 2016 through 2025 of the Per Acre Rent Schedule. The annual price index component used in the Per Acre Rent Schedule allows the rent per acre amount to stay current with inflationary or deflationary trends. If the rent schedule were not based on the ''zone'' concept, where county per acre land values were placed into a corresponding zone value, the price index adjustment would not be necessary, assuming the county per acre land values were kept current. However, since the Act directs the BLM to ''revise the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use to reflect current values of land in each zone,'' the final rule retains the zone concept as well as the annual price index adjustment.

The previous Per Acre Rent Schedule was adjusted annually by the change in the IPD–GDP index from the second quarter to the second quarter. From the initial rent schedule in 1987 to the rent schedule for 2007, the change in the IPD–GDP index increased the rent per acre amounts by 62.2 percent. In comparison, the Consumer Price Index—for all Urban Consumers (CPI–U) index increased 85.8 percent for the same period. Because the growth rate for the IPD–GDP is generally less than that for the CPI–U, one ANPR commenter suggested using half of the CPI–U index rather than the current 100 percent of the IPD–GDP as the CPI–U is more easily available. The commenter said that halving the CPI–U number is in line with the lesser IPD–GDP and allows for a normalization of the annual index adjustment while still allowing for increases with inflation.

Two ANPR commenters stated that the payment due date (January 1) comes less than one month after the payment amount is announced in December. The commenters recommended using an earlier-published index than the current one (July of each year). Another ANPR commenter stated that the IPD–GDP is reported as a national number only and does not reflect any potential regional changes in the price level.

In the proposed rule, we chose the CPI–U because it is one of the most common indexes used by economists and the Federal Government to reflect inflationary and deflationary trends in the economy as a whole. It is also one of the most recognizable and familiar indexes to the American consumer and it can be easily obtained from published sources by both Federal agencies and the American public.

The BLM received several comments on the proposed use of the CPI–U index instead of the IPD–GDP. Nearly all commenters on the proposed rule supported the continued use of the IPD–GDP instead of the CPI–U index. Two commenters stated that the CPI–U only measures inflation felt by consumers and does not include price inflation for other parts of the economy. The commenters stated that the IPD–GDP reflects a much broader range of inflation and is more appropriate to track increases in land values. In addition, several commenters stated that holders whose rental obligations exceed several million dollars annually must have more advance notice (or predictability) of their obligations for proper planning, budgeting, and recovery of these fees.

The BLM made two changes in the annual index adjustment factor from the proposed rule to the final rule. First, we changed the annual index adjustment factor from the CPI–U to the IPD–GDP because we agree with some of the commenters that the IPD–GDP index tracks increases in land values as well as, if not better than, the CPI–U. For example, in the last 5 years when land values have risen nearly 80 percent nationally, the IPD–GDP (which normally lags behind the CPI–U) has increased slightly more than the CPI–U (14 percent to 13.6 percent, respectively). In addition, the IPD–GDP tracks a broader range of economic indicators than does the CPI–U, and is just as easy to track on an annual basis as the CPI–U. Secondly, in order to

provide the predictability requested by several commenters (and which the BLM agrees is necessary), we changed how the annual index factor is calculated and how it is applied in the final rent schedule. In the final rule the annual index adjustment is based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available (or 1.9 percent). This figure (1.9 percent) can then be applied for calendar years 2006 through 2015 to provide the predictability in the rent schedule requested by many of the commenters. The BLM will recalculate the annual index adjustment in 2014 based on the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) and will apply it to years 2016 through 2025 of the Per Acre Rent Schedule to provide the predictability requested by many of the commenters. In summary, these changes provide the predictability advocated by several commenters and uses an index that better reflects changing land values and other broad indicators of economic trends.

Table 5 shows how the IPD–GDP index has been applied to the 2002 ''Base Year'' rent schedule (see Table 4) and subsequent years through 2007 to arrive at the final Per Acre Rent Schedules for years 2008 through 2015 (see Table 6). Table 5 is included here only to show how the final Per Acre Rent Schedule (Table 6) was developed. The BLM will not use the per acre rent values shown in Table 5 for any rent calculation purposes. (Rent paid for years 2002–2007 under the previous schedule would not be recalculated using the rates in Table 5).

TABLE 5—2002–2007 PER ACRE RENT SCHEDULES

County zone number and per acre zone value	2002 per acre rent (base year)	2003 per acre rent (2.1 percent IPD–GDP increase from preceding year)	2004 per acre rent (2.9 percent IPD–GDP increase from preceding year)	2005 per acre rent (3.2 percent IPD–GDP increase from preceding year)	2006 * per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2007 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)
Zone 1 $250	$6.59	$6.73	$6.92	$7.14	$7.28	$7.42
Zone 2 $500	13.18	13.45	13.84	14.28	14.56	14.83
Zone 3 $1,000	26.35	26.90	27.68	28.57	29.11	29.67
Zone 4 $1,500	39.53	40.36	41.53	42.85	43.67	44.50
Zone 5 $2,000	52.70	53.81	55.37	57.14	58.22	59.33
Zone 6 $3,000	79.05	80.71	83.05	85.71	87.34	89.00
Zone 7 $5,000	131.75	134.52	138.42	142.85	145.56	148.33
Zone 8 $10,000	263.50	269.03	276.84	285.69	291.12	296.65
Zone 9 $20,000	527.00	538.07	553.67	571.39	582.24	593.31
Zone 10 $30,000	790.50	807.10	830.51	857.08	873.37	889.96
Zone 11 $50,000	1,317.50	1,345.17	1,384.18	1,428.47	1,455.61	1,483.27
Zone 12 $100,000	2,635.00	2,690.34	2,768.35	2,856.94	2,911.22	2,966.54

* Counties are assigned to appropriate zones for calendar years 2006–2010 based upon 2002 NASS Census Data (80% of average per acre land and building value).

We use 2002 as the base year, or beginning point, for the final rent schedule because the most recent NASS Census data is for 2002. The annual index adjustment for calendar years 2003 through 2005 is based on the previous year's change in the IPD–GDP, i.e., 2.1 percent, 2.9 percent, and 3.2 percent, respectively. However, in order to provide the predictability suggested by some commenters and as explained above, the annual index adjustment for calendar years 2006 through 2015 is based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available, or 1.9 percent. We can therefore extend the Per Acre Rent Schedule into the future through calendar year 2015 as shown in Table 6.

TABLE 6—2008–2015 PER ACRE RENT SCHEDULES

County zone number and per acre zone value	2008 * per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2009 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2010 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2011 ** per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2012 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2013 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2014 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2015 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)
Zone 1 $250	$7.56	$7.70	$7.85	$8.00	$8.15	$8.30	$8.46	$8.62
Zone 2 $500	15.11	15.40	15.69	15.99	16.30	16.61	16.92	17.24
Zone 3 $1,000	30.23	30.80	31.39	31.99	32.59	33.21	33.84	34.49
Zone 4 $1,500	45.34	46.21	47.08	47.98	48.89	49.82	50.76	51.73
Zone 5 $2,000	60.46	61.61	62.78	63.97	65.19	66.42	67.69	68.97
Zone 6 $3,000	90.69	92.41	94.17	95.96	97.78	99.64	101.53	103.46
Zone 7 $5,000	151.15	154.02	156.94	159.93	162.96	166.06	169.22	172.43
Zone 8 $10,000	302.29	308.03	313.89	319.85	325.93	332.12	338.43	344.86
Zone 9 $20,000	604.58	616.07	627.77	639.70	651.85	664.24	676.86	689.72
Zone 10 $30,000	906.87	924.10	941.66	959.55	977.78	996.36	1,015.29	1,034.58

TABLE 6—2008–2015 PER ACRE RENT SCHEDULES—Continued

County zone number and per acre zone value	2008 * per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2009 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2010 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2011 ** per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2012 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2013 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2014 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)	2015 per acre rent (1.9 percent IPD–GDP increase—average annual increase from 1994–2003)
Zone 11 $50,000	1,511.45	1,540.17	1,569.43	1,599.25	1,629.64	1,660.60	1,692.15	1,724.30
Zone 12 $100,000	3,022.90	3,080.34	3,138.86	3,198.50	3,259.27	3,321.20	3,384.30	3,448.60

* Counties are assigned to appropriate zones for calendar years 2008–2010 based upon 2002 NASS Census Data (80% of average per acre land and building value).

** Counties are re-assigned to appropriate zones for calendar years 2011–2015 based on 2007 NASS Census Data (80% of average per acre land and building value).

The annual index adjustment will then be recalculated in 2014 and each subsequent 10-year period based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year (2014, 2024, 2034, etc.) when the NASS Census data becomes available. For example, the annual index adjustment will next be recalculated in 2014 (when the 2012 NASS Census data becomes available) based on the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data becomes available) and will be applied annually to the Per Acre Rent Schedules for calendar years 2016 through 2025. In the event that the NASS Census stops being published, or is otherwise unavailable, then the only changes to the rent schedule will be the annual index adjustment (see section 2806.22(a)) until a new rent schedule is developed through rulemaking.

Section 2806.22 also explains that the BLM would review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and if appropriate, revise the number of county zones and the per acre zone value. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect their average per acre land and building values (less the 20 percent reduction) contained in the NASS Census. The BLM may revise the number of zones and the per acre zone value in the 2002 base Per Acre Rent Schedule (section 2806.20(a)) following the publication of the 2012 NASS Census. Since the 2012 NASS Census data will not be available until early to mid 2014, based on current timeframes, any revision would be applicable to the calendar year 2016 rent schedule. Although the NASS Census occurs at 5-year intervals, the revision of the number of zones and the per acre zone value will occur each 10-year period after publication of the NASS Census data in 2012, 2022, 2032, and so forth. Based on historic trends in average per acre land values, the BLM does not foresee that it would be necessary to revise the Per Acre Rent Schedule after each NASS Census period. The BLM finds, however, that it would likely be necessary to revise the Per Acre Rent Schedule after every other NASS Census period (each 10-year period) in order to keep the schedule current with existing per acre land values.

The one-year delay (2016) in implementing the revised rent schedule based on data from the 2012 NASS Census is a change from the proposed rule, which stated that the revised schedule would be effective in calendar year 2015. We revised the final rule to provide holders with more notice and time to plan, budget, and recover potentially significant rent increases resulting from the revisions to the rent schedule at 10-year intervals. The one-year delay to 2016 in implementing the revised rent schedule based on data from the 2012 NASS Census is also consistent with the one-year delay in the reassignment of counties potentially made each 5 years after the availability of the NASS Census data. The re-assignment of counties will be effective for calendar years 2011, 2016, 2021, 2026, and so forth (see the discussion for section 2806.21).

We also revised final section 2806.22 by deleting proposed paragraph (c) which would have adjusted the rate of return after each 10-year period. We removed this provision based on the need (as expressed by several commenters) to provide greater predictability of future rental amounts and to ensure that future adjustments are primarily based on changes in land values and not other economic factors (see the discussion under ''Rate of Return'').

The adjustments provided by this section will keep the Per Acre Rent Schedule current relative to average per acre land value as directed by the Act. In addition, since the adjustments provide one additional year of advance notice on county re-assignments (each 5-year period), and one additional year of advance notice on the revision of the number of zones and zone values (each 10-year period), the changes should not be either burdensome to administer or surprising in their outcome.

Section 2806.23 How will BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

Final section 2806.23(a) explains that (except as provided by sections 2806.25 and 2806.26) the BLM calculates rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way area that fall in each zone and multiplying the result by the number of years in the rental payment period. The final rent calculation methodology is identical to the proposed methodology except for changing the phrase ''rental period'' to ''rental payment period'' (the length of time for which the holder is paying rent) to make the rule clearer. An example explaining how the methodology will be applied follows: An existing pipeline right-of-way in New Mexico occupies 0.74 acres of public land in McKinley County and 4.8 acres of public land in San Juan County. The 2002 NASS Census indicates that the average per acre land and building value for McKinley County is $75 (Zone 1 on the Per Acre Rent Schedule ($75 × .80 = $60)) and $324 for San Juan County (or Zone 2 ($324 × .80 = $259) on the Per Acre Rent Schedule). The per acre rent value for calendar year 2008 for Zone 1 is $7.56 and for Zone 2 it is $15.11. The 2008 annual rent for the portion of the

right-of-way in Zone 1 (McKinley County) is $6.05 (0.74 acres (rounded up to 0.8 acres) multiplied by $7.56 = $6.05). The 2008 annual rent for the portion of the right-of-way in Zone 2 (San Juan County) is $72.53 (4.8 acres multiplied by $15.11 = $72.53). The total 2008 rent for the entire grant would be $78.58. Regardless of whether the holder is an individual or business entity, given that the annual rent is $100 or less, the holder can only pay for the entire remaining term of the grant, or pay rent at 10-year intervals, not to exceed the term of the grant (see section 2806.24).

Final section 2806.23(b) provides for the phase-in of the initial implementation of the Per Acre Rent Schedule by reducing the 2009 per acre rent by 25 percent. Lastly, this section explains that if the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

We received two comments on this proposed section. Both commenters suggested that we include the word ''payment'' when referring to the ''rental period'' in section 2806.23(a) so that the phrase reads ''rental payment period'' to denote the length of time for which the holder is paying rent. The commenters stated that some holders may confuse the phrase ''rental period'' to be the term of the grant instead of the length of time for which the holder is paying rent. We agree that this change improves clarity and have made this change in the final rule.

We received no other comments on this section, but we did request comments in the proposed rule at section 2885.20 on the need for a phase-in provision for FLPMA and MLA grants. As a result of those comments (see discussion for section 2885.20(b)), we have added final section 2806.23(b) which provides for a phase-in of the initial implementation of the Per Acre Rent Schedule by reducing the 2009 per acre rent by 25 percent. In calendar year 2009, all holders will pay 75 percent of the scheduled rental rates, and thereafter, 100 percent of the scheduled rental rates.

The BLM does not expect the rental increases to be financially burdensome for most holders. We believe that several provisions added to the final rule (an additional 1-year advance notice of potentially large rental increases, reducing the NASS Census land and building value for each county by 20 percent, reducing the rate of return by 18.5 percent (from 6.47 percent to 5.27 percent), reducing the threshold from $1,000 to $500 for payment of annual rent instead of 10-year rental payments, and waiving 25 percent of the calendar year 2009 rental rates for all authorization holders), in conjunction with the more flexible rent payment options described in final sections 2806.24 and 2885.21, as well as the existing hardship provision found at section 2806.15(c), will provide appropriate relief from any large, unexpected increases in rent payments that are due to implementation of the revised linear rent schedule.

Section 2806.24 How must I make rental payments for a linear grant?

Final section 2806.24(a) explains that for linear grants, except those issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not 15 years.

(ii) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

Final section 2806.24(a) replaces the rent payment options in previous section 2806.23(a). Previously, only individual grant-holders with annual rent in excess of $100 had the option to pay their rent annually or at multi-year intervals of their choice. All other grant holders had to pay a one-time rent payment for the term of the grant or pay rent at 10-year intervals not to exceed the term of the grant. These provisions were incorporated in the 2005 regulations to help reduce or eliminate costs associated with the billing and collection of annual rent to both the BLM and the holder. However, many holders pointed out that making rent payments, especially for existing grants, for 10- to 30-year terms (100 years for grants issued in perpetuity) can be an extreme financial hardship, especially for small business entities operating on limited annual budgets.

For FLPMA authorizations, the BLM has some ability to address these issues under the ''undue hardship'' provisions in current section 2806.15(c), but this process can be burdensome on the holders, requires approval of the appropriate BLM State Director, and is not available to holders of MLA authorizations. Several holders of MLA authorizations pointed out that the annual rent payment for some of their grants exceed $10,000, and in at least one case, the annual rent is in excess of $100,000, which would have required them to make minimum rent payments between $100,000 and $1,000,000 for a 10-year rental payment period. These holders have suggested that corporations and business entities be given rent payment options similar to those of individuals, except with a higher annual rental threshold of $500 or $1,000, instead of the $100 threshold available to individual holders.

Three commenters on the ANPR said they supported flexible term-payment schedules (annual payments, 5-year payments, 10-year payments) for all authorizations, especially those with annual rent greater than $500. Several commenters said that the BLM should include a 3- to 6- year phase-in period, along with more flexible rent payment periods, in order to provide relief from a large or unexpected increase in individual rental payments. One commenter on the proposed rule supported the rent payment periods as proposed, while one commenter said that the $1,000 threshold is too high and should be set no higher than $500. The commenter stated that there are more and more ''other than individuals'' entities that are very small operations for which the proposed regulations can cause a financial hardship. The BLM agrees that the $1,000 threshold may be excessive for some small business holders who would have to pay nearly $10,000 (for a 10-year period) if their annual bill were just less than $1,000. By reducing the threshold to $500, the maximum 10-year bill would be $4,990, an amount that may cause less financial hardship to small business operators. Therefore, in the final rule the $1,000 threshold for payment of annual rent has been reduced to $500. This change should have positive impacts to small businesses that may not have the necessary capital to make long-term rental payments.

In summary, under final section 2806.24(a), the holder retains the option to pay rent for the entire term of the grant, except for grants issued in perpetuity. No changes in rent payment

options are made for those holders who are considered ''individuals'' with the exception that if the annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. The final rule eliminates the option for individuals with annual rent greater than $100 to pay at multiple-year intervals of their choice. An ''individual'' does not include any business entity, e.g., partnerships, corporations, associations, or any similar business arrangements. However, the BLM agrees that ''non-individuals'' need to have more flexible rent payment options, especially those holders whose annual rent payment is in excess of $500. Under the final rule, when this threshold is met, the holder (non-individual) has the option to pay its rent on an annual basis, or at 10-year intervals, not to exceed the term of the grant. For example, the holder of a 25-year grant (a grant issued on May 25, 2005, for a 25-year period would expire on December 31, 2029) whose annual rent is $2,000 would have the option upon grant issuance to make annual payments of $2,000 plus annual index adjustments (the initial rent period would be for a 7-month period or a rent payment of $1,166.67). The holder could also choose to make a payment in advance for 10 years (total payment of $19,166.67 (9 years + 7 months); for 20 years (total payment of $39,166.67 (19 years + 7 months); or for the entire 25 years (total payment of $49,166.67 (24 years + 7 months), but not for any other multi-year period. If the holder's annual rent is $500 or less, the holder (non-individual) must pay rent at 10-year intervals, not to exceed the term of the grant. If rent is not paid for the full term, subsequent rental payments will be based on the changes to the rental schedule as described in section 2806.21 (the re-assignment of counties each 5-year period) and section 2806.22 (the annual CPI-U index adjustment and/or the adjustment to the number and value of rental zones each 10-year period), but the $100 and $500 thresholds used to determine the eligibility for annual payments by individuals and business entities, respectively, will not be adjusted.

Final section 2806.24(b) explains that for linear grants issued in perpetuity (except as noted in sections 2806.25 and 2806.26), you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. Under this provision, you have the option to pay for a 10-year term, a 20-year term, or a 30-year term. No other terms are available. If your annual rent is greater than $100, you may pay annually or at 10-year intervals (10-year term, 20-year term, or 30-year term), not to exceed 30 years. Again, no other terms are available.

(2) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed 30 years. Under this section, you have the option to pay for a 10-year term, a 20-year term, or a 30-year term. No other terms are available. If your annual rent is greater than $500, you may pay annually or at 10-year intervals (10-year term, 20-year term, or 30-year term), not to exceed 30 years. No other terms are available.

Final section 2806.24(b) replaces previous section 2806.23(c), which gave non-individual holders of a perpetual grant only one rent payment option, that is, a one-time payment based on the annual rent (either determined from the Per Acre Rent Schedule or from an appraisal) multiplied by 100. Holders (non-individuals) of perpetual grants had no other option under previous rules but to pay a one-time payment that many found to be burdensome. Under the 1987 regulations (43 CFR 2803.1–2(a)), holders of grants, including perpetual grants, paid either annually or for a 5-year period, but could not make a one-time payment. This was especially problematic when public land encumbered by a perpetual grant was transferred out of Federal ownership. The 2005 regulations provided for the one-time payment option (see section 2806.23(c)), but did not offer other rent payment options, which are necessary for proper administration of those perpetual grants already in existence prior to 2005, and which encumber land that the BLM intends to administer. Although the term of a FLPMA grant can be any length, it is the BLM's policy to adhere strictly to the factors listed in current section 2805.11(b) to establish a reasonable term. The factors that must be considered in establishing a reasonable term include the: (1) Public purpose served; (2) Cost and useful life of the facility; (3) Time limitations imposed by licenses or permits required by other Federal agencies and state, tribal, or local governments; and (4) Time necessary to accomplish the purpose of the grant. The BLM's own land use planning horizon is generally only 20 to 30 years, so it is seldom in the public interest to issue land use authorizations which exceed this horizon. In addition, the term of MLA grants cannot exceed 30 years (see current section 2885.11(a)).

Although the BLM now rarely issue grants in perpetuity, except when the land encumbered by the grant is being transferred out of Federal ownership (see final section 2806.25), we must still be able to effectively administer grants that were issued in perpetuity under prior authorities (generally pre-FLPMA authorities and the MLA prior to 1973). Holders of these grants have requested flexible rent payment options. Final section 2806.24(b) provides rent payment options which are deemed necessary for proper administration of perpetual grants when the land is not being transferred out of Federal ownership. In addition, final sections 2806.25 and 2806.26 allow you to make a one-time payment for perpetual grants and perpetual easements, respectively, when the land encumbered by the grant or easement is being transferred out of Federal ownership.

We received two comments of support for the rent payment options in proposed section 2806.24(b). However, a third commenter suggested that holders of perpetual grants should always have the option to make a one-time payment, even if the encumbered land is not being transferred out of Federal ownership. The BLM disagrees with this suggestion because a one-time rental payment for a perpetual grant is not significantly greater (in some cases it could even be less) than a one-time payment for a grant with a term of 30 years. Therefore, it is not in the public's interest, in the case of Federally-owned land, to forfeit possible future revenues for uses (the siting of right-of-way facilities on public land) that may ultimately extend beyond a 30-year time period. These subsequent rental receipts will far exceed the administrative costs of issuing a new rental bill each 30-year period and will continue to provide needed revenues to the U.S. Treasury, and to state and local governments (who receive 50 percent of MLA rental receipts). Final section 2806.24(b) is the same as proposed.

Final section 2806.24(c) is also the same as proposed section 2806.24(c) and previous section 2806.23(b), which explains that the BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant. We received no comments on this section and it remains as proposed.

Section 2806.25 How may I make rental payments when land encumbered by my perpetual linear grant (other than an easement issued under § 2807.15(b)) is being transferred out of Federal ownership?

Final section 2806.25 explains how you may make one-time rental payments for your perpetual linear grant (other than an easement issued under section 2807.15(b) (see section 2806.26)) when land encumbered by your grant is being transferred out of Federal ownership. Section 2806.25(a) explains that if you have an existing perpetual grant (whether issued under FLPMA or its predecessors) and the land your grant encumbers is being transferred out of Federal ownership, you may make a one-time rental payment. You are not required to make a one-time rental payment, but if you choose to do so, the BLM will determine your one-time payment for a perpetual right-of-way grant by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data. Under this calculation, the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula below. The formula for this calculation is: One-time rental payment = annual rent/(Y − CR), where:

(1) Annual rent = current annual rent applicable to the subject property from the Per Acre Rent Schedule;

(2) Y = yield rate (rate of return) from the Per Acre Rent Schedule (5.27 percent); and

(3) CR = annual percent change in rent as determined by the most recent 10-year average of the difference in the IPD–GDP Index from January of one year to January of the following year.

Section 2806.25(b) explains how you must make a one-time payment for term grants converted to a perpetual grant under section 2807.15(b). If the land your grant encumbers is being transferred out of Federal ownership and you request a conversion of your term grant to a perpetual right-of-way grant, you will be required to make a one-time rental payment in accordance with section 2806.25(a).

Section 2806.25(c) explains that in paragraphs (a) and (b) of this section, the annual rent is determined from the Per Acre Rent Schedule (see section 2806.20(c)) as updated under section 2806.22. However, the per acre zone value and zone number used in this annual rental determination will be based on the per acre zone value from acceptable market information or an appraisal, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census. This section also explains that you may submit an appraisal report on your own initiative in accordance with paragraph (d).

Section 2806.25(d) explains that when no acceptable market information is available or when no appraisal has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report in accordance with Federal appraisal standards.

Section 2806.25 is a new section that explains how one-time rental payments will be determined for perpetual grants (other than an easement issued under section 2807.15(b)) when the land your grant encumbers is being transferred out of Federal ownership. It is important to note that you are under no obligation to make a one-time rental payment for your existing perpetual grant when the land your grant encumbers is being transferred out of Federal ownership. If you have an existing term or perpetual grant and you have made either annual or multi-year payments under section 2806.24, and the land your grant encumbers is to be transferred out of Federal ownership, and you choose not to make a one-time rental payment to the BLM, you would negotiate future rental payments for your grant with the new land owner at the appropriate time. However, if you desire to make a one-time payment to the BLM prior to the transfer of the land, and you have an existing perpetual grant, section 2806.25(a) allows the BLM to determine the one-time rental payment by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data. Under this calculation, the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula below. The formula for this calculation is: One-time rental payment = annual rent/(Y − CR), where:

(1) Annual rent = current annual rent applicable to the subject property from the Per Acre Rent Schedule;

(2) Y = yield rate (rate of return) from the Per Acre Rent Schedule (5.27 percent); and

(3) CR = annual percent change in rent as determined by the most recent 10-year average of the difference in the IPD–GDP Index from January of one year to January of the following year.

For example, if the most recent 10-year average of the difference in the IPD–GDP index from January of one year to January of the following year is 1.27 percent, and since the rate of return is a standard 5.27 percent, then the overall capitalization rate is 4.0 percent (5.27 − 1.27 = 4.0). The one-time rental payment for a perpetual right-of-way grant with an annual rent of $36.63 would be determined by dividing the annual rent ($36.63) by the overall capitalization rate (.04), or $915.75. This methodology of calculating rent is known as the income capitalization approach.

In the proposed rule, the BLM also considered other methods to determine a one-time rental payment, including an administrative approach similar to previous section 2806.23(c)(1), where a one-time payment is determined by multiplying the annual rent by 100. Under this approach, a one-time payment for the same right-of-way grant described above with an annual rent payment of $36.63 would be $3,663 ($36.63 multiplied by 100), instead of $915.75. While this approach was reasonable when using the previous per acre rent schedule, it would have generated an excessively high one-time payment when using current land values as directed by the Act. The BLM also considered using a discounted cash flow (DCF) method to calculate the present value of the projected annual rent payments over a 100-year term, assuming annual rent payments are made in advance. The DCF approach would generate a one-time payment similar to the income capitalization approach. In the above example, a one-time rental payment using the DCF method for the same annual rent payment figure of $36.63 would be $953.24 compared to $915.75 using the income capitalization approach. In general, the DCF formula is more complex and prone to rounding inconsistencies, as compared to the income capitalization formula, which is fairly straightforward and simple to use.

The BLM received only a few comments on proposed section 2806.25(a). Most commenters supported the income capitalization approach to determine the one-time rent payment for perpetual grants as reasonable. However, two commenters stated that the ''Income Approach'' for valuing land is not typically used or allowed under standard appraisal practices. The BLM disagrees with the latter comments since rental receipts for right-of-way uses (especially rental receipts that are specifically based on rural land values as is the case of the Per Acre Rent Schedule) are an acceptable indicator of land values under Federal appraisal standards.

Given the above considerations, the BLM believes that the income capitalization approach is the most reasonable methodology for converting an annual rent payment (with an annual

adjustment factor) to a one-time payment for a perpetual term. The only variable in the final formula is the annual percent change in rent, which could be determined on a case-by-case basis. However, to provide some certainty, and since the Per Acre Rent Schedule already utilizes this component, the BLM believes that using a 10-year average of the annual difference in the IPD–GDP index will normalize this variable and avoid either abnormally high or low values that can result from using a one point-in-time figure. Other than changing the annual index from the CPI–U to the IPD–GDP, to be consistent with the annual indexing used in the final Per Acre Rent Schedule, the only other change to paragraph (a) is the method used to determine the yield rate (or ''Y'' in the formula). In the proposed rule, the yield rate would have been determined by the most recent 10-year average of the annual 30-year Treasury Bond Rate as of January of each year. In the final rule, the yield rate (Y) used in the income capitalization formula in sections 2806.25(a) and 2885.22(a) is a constant 5.27 percent, again to be consistent with the constant rate of return utilized in the final Per Acre Rent Schedule. As such, the rate of return will not be adjusted in this formula except by new rulemaking, or whenever a separate appraisal report is completed and approved by the BLM under paragraph (d) of this section.

Section 2806.25(b) addresses the situation where there is an existing term grant and you ask BLM to convert it to a perpetual FLPMA grant under final section 2807.15(b). If you make this request, the BLM will treat it as an application for an amendment under current section 2807.20. If the BLM approves your request to change the term of your grant, the BLM will determine the mandatory one-time rental payment as explained in paragraph (a) of this section. We received no comments on this paragraph and made no changes to the final rule, except to change the reference to section 2807.15(c) to 2807.15(b) because of the consolidation of proposed paragraph (c) with existing paragraph (b).

Section 2806.25(c) provides that if the land your grant encumbers is being transferred out of Federal ownership and you have a perpetual grant and have requested a one-time rental payment, or you have requested the BLM to amend your grant to a perpetual grant and seek a one-time rental payment, the BLM would base the per acre zone value and zone number used in the annual rental determination on the per acre land value from the market information or appraisal report used for the land transfer action and not the county average per acre land and building value from the NASS Census. The BLM believes that when the land a grant encumbers is being transferred out of Federal ownership, the most accurate and current market data should be used to determine the one-time rental payment. For example, for Clark County, Nevada, 80 percent of the average per acre land and building value from the 2002 NASS Census is $2,854 (Zone 6 on the 2002 Per Acre Rent Schedule or $79.05 per acre rent). If an appraisal report for a competitive sale concluded that the 2002 average per acre land value is instead $175,000 per acre, then the annual per acre rent would be $2,635 (or Zone 12 on the per acre rent schedule). The BLM would not use the actual appraised per acre value or the actual per acre sale value to determine the annual per acre rent, but instead would use the actual appraised per acre value to determine the appropriate zone number on the Per Acre Rent Schedule. The zone number then determines the appropriate per acre rent under final section 2806.25. A few commenters suggested that holders should always have the option to conduct their own appraisal under section 2806.25(d). The BLM agrees with these comments and has therefore revised final section 2806.25(c) to specify that holders may prepare their own appraisal report under section 2806.25(d).

Section 2806.25(d) explains that when no acceptable market information is available, and no appraisal has been completed for the land transfer action, or when the BLM requests it, you must prepare an appraisal report, at your expense, in accordance with Federal appraisal standards. The BLM will only require you to prepare an appraisal report when other acceptable market data is not available. If you must provide an appraisal report, the DOI's Appraisal Policy Manual, dated October 1, 2006, sets forth the DOI's appraisal policies. Addendum Number 3 to DOI's Appraisal Policy Manual specifically provides guidance concerning land valuation, alternative methods of valuation, and appraisal reports prepared by third (i.e., non-Federal) parties. It is the DOI's policy that all valuation services (whether performed by DOI appraisers or by non-DOI appraisers providing valuation services under a DOI contract or on behalf of a private third party, such as a right-of-way holder) must conform to the current Uniform Standards of Professional Appraisal Practice (USPAP) and the current Uniform Standards for Federal Land Acquisitions (USFLA).

If you have provided an appraisal report, the BLM State Director will refer it to the DOI's Appraisal Services Directorate (ASD). The ASD will review the appraisal report to determine if it meets USPAP and USFLA standards and advise the BLM State Director accordingly. If these standards are met, the BLM State Director will then use the data in the appraisal report to determine the zone value and zone number used in the calculation of the one-time rent payment provided by paragraphs (a) and (b). However, if your appraisal report uses a different EF or yield rate from those in the formula in section 2806.25(a) or section 2885.22(a), then the actual per acre land value as determined by the appraisal report must be used in the determination of the one-time rent payment, even if it exceeds the highest per acre land value from the rent schedule.

The BLM specifically requested comments on whether an appraisal report, if required, should also address the appropriate EF, in addition to determining per acre land values. The EF from an appraisal report could be different from the 50 percent used in the Per Acre Rent Schedule, depending on the type of facility being authorized (see EF discussion earlier in the preamble). The rate of return (5.27 percent—see Table 4) could also change, if the one-time rental payment for a perpetual grant were determined on a case-by-case basis under final paragraph 2806.25(d). For example, if the average per acre land and building value from the NASS Census is $700 (Zone 3 on the 2002 Per Acre Rent Schedule or $26.35 per acre rent) and an appraisal report concluded that the 2002 per acre land value is instead $400 per acre (Zone 2 or a $13.18 per acre rent), but the appraisal report determines that the EF is 85 percent, then the annual per acre rent would equal $17.92 ($400 multiplied by .85 multiplied by 5.27 percent). Similar variations in the final per acre rent value could also occur if the appraisal report were to determine a higher or lower rate of return. In the above example, if the appraisal report determined that the per acre land value is $400, the EF is 85 percent, and the rate of return is 8 percent (instead of 5.27 percent), then the annual per acre rent would equal $27.20 ($400 multiplied by .85 multiplied by 8.0 percent). Once the annual rent is calculated, then the one-time payment would then be determined under section 2806.25(a).

The BLM received several comments on paragraph (d) of this section. Most

advocated that the holder always have the opportunity to conduct an appraisal report under this paragraph, and that the appraisal report consider all factors in arriving at a one-time rental payment. Some commenters also advocated the use of appraisal reports, but with limits on the amount of the EF, i.e., the EF should never exceed 50 percent. Another commenter asked whether the BLM, in lieu of an appraisal report, would be able to utilize a process to determine per acre land values similar to that used in lower value Federal land acquisitions, known as waiver valuations.

Final section 2806.25(d) specifies that when no acceptable market information is available and no appraisal report has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report using Federal appraisal standards that explains how you estimated the land value per acre, the rate of return, and the EF. The final rule places no restrictions on the amount of the EF or the rate of return, but will let the market conditions set these amounts (e.g., comparable sales data), which in turn determines the annual rent value and/or the one-time rental payment. The proposed rule would have mandated that the yield rate be determined by using the 10-year average of the most recent 30-year Treasury Bond rate. In the final rule, the yield rate will be determined by current market conditions as documented in the appraisal report. To place arbitrary and artificial limits on any of the market conditions used to determine a fair market value rent would be in violation of Federal appraisal standards (see Addendum Number 3 to DOI's Appraisal Policy Manual).

The BLM will use the final Per Acre Rent Schedule to determine rent for all linear facilities (except as provided by sections 2806.25, 2806.26, and 2885.22), even when those facilities occupy minimal acreage on low value land. We do not foresee any case where ''waiver valuations'' would be appropriate for use in determining rent for linear facilities, as suggested by one commenter, although this process is available to BLM offices to determine (minimum) rental values for non-linear facilities located on small and/or low valued acreages (see section 2806.50).

Sections 2806.25(c) and (d) replace sections 2806.20(c) and (d) of the previous regulations which allowed the BLM to use an alternate means to compute your rent, if the rent determined by comparable commercial practices or by an appraisal would be 10 or more times the rent from the schedule. We made these changes in the final rule to comply with the Act, which requires the BLM to use a Per Acre Rent Schedule based upon land values to determine rent for linear right-of-way grants located on public land.

Section 2806.26 How may I make rental payments when land encumbered by my perpetual easement issued under § 2807.15(b) is being transferred out of Federal ownership?

Section 2806.26(a) addresses the situation where there is an existing term or perpetual grant and you ask BLM to convert it to a perpetual easement as provided by section 2807.15(b). If you make this request, the BLM will treat it as an application for an amendment under current section 2807.20. Under the final rule, if the BLM approved your request to convert your term or perpetual grant to a perpetual easement, the BLM will use the appraisal data from the DOI's Appraisal Services Directorate for the land transfer action (i.e., direct or indirect land sales, land exchanges, and other land disposal actions) and other market information to determine the one-time rental payment for perpetual easements.

Section 2806.26(b) explains that when no appraisal or acceptable market information is available for the land transfer action or when the BLM requests it, you must prepare a report required under section 2806.25(d). A new addition to this paragraph in the final rule allows you to submit an appraisal report on your own initiative in accordance with section 2806.25(d).

Section 2806.26 is a new section made necessary by the BLM's recent policy to provide for perpetual easements to existing right-of-way holders who want to convert their term or perpetual grant to an easement when the land their grant encumbers is to be transferred out of Federal ownership under section 2807.15(b). The BLM has worked closely with its right-of-way customers and holders to develop an easement document (and policy) similar to the easement document that a utility company might acquire across private land. Under this policy, easements (similar to easements that utility companies would acquire for similar purposes across private land) will only be issued to you when land your grant encumbers is to be transferred out of Federal ownership. Since in these cases the BLM will not administer the easement (because the land your easement encumbers will no longer be public land), the BLM believes that the one-time payment should be determined by an appraisal or acceptable market information used to determine the per acre land value for the land disposal action. The one-time rental payment determined in this manner will reflect the value of the rights transferred to you based upon similar transactions in the private sector, and may or may not be the same as a one-time payment for a perpetual grant determined under section 2806.25(b).

In the proposed rule, the BLM asked for specific comments on the need for perpetual easements when encumbered lands are to be transferred out of Federal ownership as well as whether the BLM has authority to issue a term easement under the MLA in those circumstances when encumbered land is to be transferred out of Federal ownership.

The term ''right-of-way'' is defined by FLPMA (43 U.S.C. 1702(f)) to include easements, leases, permits, or licenses to occupy, use, or traverse public lands granted for the purposes listed in Title V of FLPMA. Most grants that the BLM issues under FLPMA are set forth on standard form 2800–14 and denoted ''Right-of-Way Grant/Temporary Use Permit.'' These grants are not regarded as easements by the agency, absent some indication to the contrary. Section 506 of FLPMA, 43 U.S.C. 1766, however, clearly contemplates the issuance of easements and provides that any effort to suspend or terminate these instruments be accompanied by the procedural safeguards of 5 U.S.C. 554. On the other hand, the provisions of the MLA at 30 U.S.C. 185 do not expressly authorize the grant of easements, unlike FLPMA's provisions at 43 U.S.C. 1702(f), 1761(a), and 1766. Both statutes do provide for the procedural safeguards of 5 U.S.C. 554 in the event of suspension or termination of the authorization. However, under the MLA the procedural safeguards of 5 U.S.C. 554 apply to all grants (see 43 U.S.C. 185(o)(1)), whereas, under FLPMA, these safeguards only apply to those authorizations considered to be easements (43 U.S.C. 1766).

Several commenters stated that permanent easements are necessary to protect their facilities when encumbered lands are transferred out of Federal ownership. Other commenters cited instances where the new land owner demanded unreasonable compensation for continued use of the right-of-way area, which may then affect delivery costs, as well as increase product costs to the end users. Commenters also stated that ''easements'' are ''understood'' in the private sector and that there is an enormous body of case law on the application and interpretation of easements, while a BLM right-of-way grant is an oddity that is often misunderstood by the private

sector. The same commenter said that the ability to have an easement rather than a BLM grant will greatly simplify management of the facility by all parties in the long run.

Many commenters on the proposed rule also supported the conversion of existing term grants to term or permanent easements under the MLA. Commenters stated that the issuance of a ''term easement'' is consistent with the current definition of ''grant'' found at 43 CFR 2881.5 (''Grant means any instrument or authorization the BLM issues under section 28 of the MLA * * * to use Federal lands to construct, operate, maintain, or terminate a pipeline''). Furthermore, the commenters stated that the BLM has existing policy allowing for MLA ''term easements'' and the final rule should support and endorse this policy. One commenter also stated that the one-time rent payment for a ''term easement'' issued under the MLA should be determined by an appraisal or market data for the land transfer action, similar to the one-time payment for a FLPMA easement described under section 2806.26.

The BLM agrees with most of the commenters regarding their desire to be able to convert existing grants to permanent and term easements when land encumbered by their FLPMA grant is transferred out of Federal ownership. However, in the final rule we have limited this section to the determination of one-time rental payments for easements issued under the FLPMA, and not the MLA. We made this decision because the term ''right-of-way'' is defined by FLPMA (43 U.S.C. 1702(f)) specifically to include ''easements'' (as well as leases, permits, or licenses) to occupy, use, or traverse public lands granted for the purposes listed in Title V of FLPMA, while the provisions of the MLA at 30 U.S.C. 185 do not expressly authorize the grant of easements, and limit the term of any grant to 30 years or less. In addition, none of the commenters provided legal support for the issuance of term easements under Section 28 of the MLA. The BLM also disagrees that the definition of ''grant'' found at 43 CFR 2881.5 (''Grant means any instrument or authorization the BLM issues under section 28 of the MLA * * * to use Federal lands to construct, operate, maintain, or terminate a pipeline'') is sufficient basis by itself for the issuance of ''term easements'' because ''easements'' are not specifically provided for in Section 28 of the MLA.

In summary, final section 2806.26(a) is the same as proposed, except for revising the paragraph cited in section 2807.15 from paragraph (c) in the proposed rule to paragraph (b) in the final rule. Section 2806.26(b) also remains the same as proposed, except the final rule specifically allows holders to submit an appraisal report on their own initiative under section 2806.25(d). We made this change to be consistent with similar changes made in section 2806.25(c).

Subpart 2807—Grant Administration and Operation

The BLM is proposing changes to the section of this subpart that deals with administration and operation of grants.

Section 2807.15 How is grant administration affected if the land my grant encumbers is transferred to another Federal agency or out of Federal ownership?

This section explains how grant administration is affected if the land your grant encumbers is transferred to another Federal agency or out of Federal ownership.

Final section 2807.15(a) explains that if there is a proposal to transfer the land your grant encumbers to another Federal agency, the BLM may, after reasonable notice to you, transfer administration of your grant for the lands the BLM formerly administered to another Federal agency, unless doing so would diminish your rights. If the BLM determined your rights would be diminished by such a transfer, the BLM can still transfer the land, but retain administration of your grant under existing terms and conditions.

We proposed no changes to section 2807.15(b), but we have revised it in the final rule based upon several comments that the content and formatting of proposed paragraphs (b) and (c) were confusing. Final section 2807.15(b) is revised to incorporate the intent of proposed paragraph (c). Final section 2807.15(b) explains that the BLM will provide reasonable notice to you if there is a proposal to transfer the land your grant encumbers out of Federal ownership. If you request it, the BLM will negotiate new grant terms and conditions with you. This may include increasing the term of your grant to a perpetual grant or providing for an easement. These changes become effective prior to the time the land is transferred out of Federal ownership. The BLM may then, in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant. In this case, administration of your grant for the lands the BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but the BLM retains administration of your grant; or

(3) Reserve to the United States the land your grant encumbers, and the BLM retains administration of your grant.

Proposed section 2807.15(c) explained that if there is a proposal to transfer the land your grant encumbers out of Federal ownership, you may negotiate new grant terms and conditions with the BLM. This may include increasing the term of your grant, should you request it, to a perpetual grant or providing for an easement. These changes would become effective prior to the time the land is transferred out of Federal ownership. The proposed rule also removed from section 2807.15(c) the cross-reference to previous section 2806.23(c), which specified how you made rental payments for perpetual grants. The BLM received several comments stating that this paragraph appears to replace existing paragraph 2807.15(b). However, the proposed rule did not remove or replace paragraph 2807.15(b). One commenter stated that the proposed section 2807.15(c) does not require the BLM to provide written notice to the grant holder of a land transfer under paragraph (c) as does paragraph (b). The commenter stated that notification should be required under both situations. Two commenters stated that holders should be given at least 60 days advance written notice while another commenter recommended at least 180 days of advance notice. Two commenters provided alternative language to combine previous paragraph (b) and proposed paragraph (c) of section 2807.15 into a new paragraph 2807.15(b). Proposed paragraph (d) would then become final paragraph (c). The recommended language submitted by these commenters to replace previous paragraph (b) and proposed paragraph (c) with a combined paragraph (b) primarily states that the BLM must provide written notification of at least 60 days prior to any proposed transfer date so that new grant terms and conditions can be negotiated. In addition, any new grant terms and conditions negotiated must be comparable to those normally found in an easement or other similar document used for utility facilities on private lands.

The BLM agrees with the commenters that proposed section 2807.15(c) is confusing because we failed to state that the action discussed in (c) would actually occur after the reasonable notification period specified in paragraph (b) and prior to the 3 options specified in paragraph (b) for

completing the land transaction. We have therefore combined proposed paragraph (c) with previous paragraph (b) as explained above. This assures that reasonable notice is provided to all holders of a pending land transfer action and allows, at the holder's request, the conversion of existing FLPMA term grants to perpetual grants or easements. The land transfer action is then completed by:

(1) Transferring the land subject to your grant. In this case, administration of your grant for the lands the BLM formerly administered is transferred to the new owner of the land;

(2) Transferring the land, with the BLM retaining administration of your grant; or

(3) Reserving to the United States the land your grant encumbers, and with the BLM retaining administration of your grant.

We did not adopt the specific language submitted by the two commenters for paragraph (b) because we do not agree that a certain number of days be specified in the rule, since each land transaction will be governed by its own timeline. However, the final rule does specify that reasonable notice will be provided to the holder so that any amended application to an existing grant may be completed prior to the transfer of land out of Federal ownership. We also did not adopt the language submitted for paragraph (b) because it failed to include the three alternatives (see previous paragraph above) for treating encumbrances when land is transferred out of Federal ownership.

Proposed section 2807.15(d) explained that you and the new owner of the land may agree to negotiate new grant terms and conditions at any time after the land encumbered by your grant is transferred out of Federal ownership. In the final rule, proposed paragraph (d) is renumbered as final paragraph (c) because, as discussed above, we incorporated proposed paragraph (c) into final paragraph (b). No other changes were made to this section.

Part 2880—Rights-of-Way Under The Mineral Leasing Act

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

This final rule revises 5 existing sections of this subpart and adds 2 new sections.

Section 2885.11 What terms and conditions must I comply with?

Final section 2885.11(a) explains that all grants, except those issued for a term of 3 years or less, will expire on December 31 of the final year of the grant. Previous section 2885.11(a) stated that all grants with a term of 1 year or longer would terminate on December 31 of the final year of the grant. This correction allows short-term grants and TUPs to expire on the day before their anniversary date. This revision also provides the holder of a 3-year grant or TUP with a full 3-year term to conduct activities authorized by the short-term right-of-way grant or TUP, instead of the 2 full years plus the partial first year under the previous section. Final section 2885.21(c) explains that the BLM considers the first partial calendar year in the initial rent payment period to be the first year of the term. Therefore, a 3-year grant or TUP, issued under the previous regulations, had a term period of 2 years plus the time period remaining in the calendar year of issuance. A 2-year grant or TUP had a term period of 1 year plus the time period remaining in the calendar year of issuance. Depending on when the grant or TUP was issued, the actual term could have been just over 2 years for a 3-year grant or TUP and could have been just over 1 year for a 2-year grant or TUP. Under the final rule, all grants and TUPs, except those issued for a term of 3 years or less expire on December 31 of the final year of the grant or TUP. The changes to this section allow the holder to use short-term grants and TUPs for the full period of the grant. For example, if a 3-year grant or TUP is issued under the final rule on October 1, 2008, it terminates on September 30, 2011, instead of December 31, 2010, under the previous rule. If a 2-year grant or TUP is issued under the final rule on October 1, 2008, it terminates on September 30, 2010, instead of December 31, 2009, under the previous rule. In most cases, the BLM will assess a one-time rental bill for the term of the grant, which reduces any administrative impact which might otherwise result from this revision. This change is also consistent with final section 2805.11(b)(2). Please refer to the preamble discussion for final section 2805.11(b)(2) for further information on this revision. We received no comments on the proposed changes to this section and the final rule adopts the proposed section without change.

Section 2885.12 What rights does a grant or TUP convey?

Prior section 2885.12(e) stated that you have a right to assign your grant or TUP to another, provided that you obtain the BLM's prior written approval. The BLM added the phrase ''unless your grant or TUP specifically states that such approval is unnecessary'' to this section to indicate that the BLM's prior written approval may be unnecessary in certain cases. In most cases, assignments continue to be subject to the BLM's written approval. However, with this change, the BLM can amend existing grants and TUPs to allow future assignments without the BLM's prior written approval. This may be especially important to the future administration of a grant when the land encumbered by a grant or TUP is being transferred out of Federal ownership, and there is a request to increase the term of your grant or TUP under section 2886.15(b). We received one comment that specifically supported this change. The final rule adopts the proposed section without change.

Section 2885.19 What is the rent for a linear right-of-way grant?

Final section 2885.19 replaces previous section 2885.19. Final section 2885.19(a) explains that the BLM will use the Per Acre Rent Schedule to calculate the rent. In addition, paragraph (a) explains that counties (or other geographical areas) will be assigned to a county zone number and per acre zone value based upon 80 percent of their per acre land and building value published in the NASS Census. The initial assignment of counties to the zones covers years 2006 through 2010 of the Per Acre Rent Schedule, and is based upon data contained in the most recent NASS Census (2002). Subsequent assignments of counties will occur every 5 years following the publication of the NASS Census. Paragraph (a) further explains that the Per Acre Rent Schedule will be adjusted periodically as follows:

(1) The BLM will adjust the per acre rent in section 2885.19(b) for all types of linear right-of-way facilities in each zone each calendar year based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available. For example, the average annual change in the IPD–GDP from 1994 to 2003 (the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available) is 1.9 percent. This annual adjustment factor is applied to years 2006 through 2015 of the Per Acre Rent Schedule. Likewise, the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) will be applied to years 2016 through 2025 of the Per Acre Rent Schedule.

(2) The BLM will review the NASS Census data from the 2012 NASS

Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision will include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and will reasonably reflect their average per acre land and building values contained in the NASS Census.

The above revision mechanisms replace previous paragraphs (b) and (c) of section 2885.19.

Final section 2885.19(b) replaces previous section 2885.19(d) and explains that you may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing to the BLM and requesting a copy. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov*.

The Per Acre Rent Schedule (and its various components) referred to in this section is the same as found in final sections 2806.20, 2806.21, and 2806.22. The BLM received several comments on the components of the Per Acre Rent Schedule in proposed sections 2806.20, 2806.21, and 2806.22. Based on those comments, counties will be assigned to a zone in the Per Acre Rent Schedule based on 80 percent of the average per acre land and building value as found in the NASS Census instead of 100 percent of that value. The rate of return will be a constant 5.27 percent which is the 10-year average of the 30-year Treasury Bond yield from 1998–2008. In addition, the annual index adjustment will be based on the average annual change in the IPD–GDP instead of the annual change in the CPI–U. No change was made in how the BLM will revise the Per Acre Rent Schedule each 10 years other than delaying its effectiveness by 1 year. The comments to proposed sections 2806.20, 2806.21, and 2806.22 and the BLM's response to those comments (as reflected in final sections 2806.20, 2806.21 and 2806.22) are applicable to this section as well and are discussed in greater detail above.

Section 2885.20 How will BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

Final sections 2885.20(a) and (c) are similar to and replace previous sections 2885.20(a) and (b), respectively. Final section 2885.20(a) explains that, except as provided by section 2885.22, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way or TUP area that fall in each zone multiplied by the number of years in the rental payment period (the length of time for which the holder is paying rent). The final rent calculation methodology is identical to the previous rent calculation methodology; only the components (average per acre land values, county zones, the EF, and rate of return) have been revised. Please refer to the preamble discussion for section 2806.23(a) for details and examples of how this process works. Final section 2885.20(c) explains that if the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice. Except for a minor edit, we made no substantive changes to these two sections from what was proposed.

Final section 2885.20(b) provides for the phase-in of the initial implementation of the Per Acre Rent Schedule by reducing the 2009 per acre rent by 25 percent, and by providing a limited 2-year phase-in period as the result of revisions to the rent schedule under section 2885.19(a)(2) if payment of the new rent causes the holder undue hardship and it is in the public interest to approve the phase-in period.

In the ANPR and the proposed rule, the BLM specifically requested comments on whether any phase-in provision is necessary, and if so, what alternative information, including holder qualifications or thresholds other than the percentage increase, might the BLM use to support a longer phase-in period, or to support a phase-in model that specifically addresses financial hardship due to potentially large rental increases. The BLM received 6 comments in response to the ANPR which generally supported a phase-in provision. Three commenters said that any rental increases greater than $1,000 should be phased-in over 5 years. One commenter said that a 6-year phase-in period would be appropriate for all rental increases. The commenter suggested no change for the first year, followed by five 20 percent annual increases. One commenter supported a phase-in period and potential relief from increased payment amounts, but offered no specific options.

In the proposed rule, the BLM proposed a limited one-time, 2-year phase-in provision which would provide the holders of MLA authorizations hardship provisions similar to those currently available to holders of FLPMA authorizations. The proposed MLA phase-in provision would only apply in situations where rent is paid on an annual basis, and the increase in the rental fee is so substantial (500 percent or greater increase) that payment of the new rental amount would likely cause undue financial hardship.

Almost all commenters on the proposed rule stated that some type of phase-in provision is necessary for all authorization holders in order to allow sufficient time to absorb the additional fee increases. One commenter said that the lack of a comprehensive phase-in provision for holders of FLPMA authorizations was the most unreasonable element of the proposed rule. Many commenters supported a 5- or 6-year phase-in period, and one commenter proposed limiting potential fee increases each year to no more than 10 percent of the initial per acre rental rate at the time the grant was issued. One commenter said that it was critical that the new rates not be implemented prior to January 2009.

The BLM does not agree with the commenters that a specific long-term phase-in provision is always necessary or reasonable when implementing a new or revised rent schedule, especially when other existing avenues to mitigate large rental increases are available to most holders. Under current section 2806.15(c), the BLM State Director may waive or reduce your rent payment, if the BLM determines that: (1) Paying the full rent for your FLPMA grant will cause you undue hardship; and (2) it is in the public interest to waive or reduce your rent. However, this provision has never been available to holders of MLA authorizations, nor was it included in the proposed rule. To provide some relief for MLA holders, final section 2885.20(b)(1) provides for a phase-in of the initial implementation of the Per Acre Rent Schedule by reducing the 2009 per acre rent by 25 percent. A similar provision has been added for holders of FLPMA grants at section 2806.23(b). In calendar year 2009, all holders will pay 75 percent of the scheduled rental rates, and thereafter, 100 percent of the scheduled rental rates.

Final section 2885.20(b)(2) will allow a 2-year phase-in period to holders of MLA grants if, as the result of any revisions made to the Per Acre Rent Schedule under section 2885.19(a)(2), the payment of the new annual rental amount would cause a specific MLA holder undue hardship and it is in the public interest to approve the phase-in. Holders of FLPMA grants have the same opportunity for a similar phase-in provision under existing section 2806.15(c).

The phase-in provision in final section 2885.20(b)(2), however, is limited only to MLA holders that qualify as small business entities (as that term is defined by the Small

Business Administration (SBA) regulations). It is estimated that only 5.3 percent of existing MLA grantees may be eligible for SBA programs (see 70 FR 21056). In addition, the two-year phase-in period will only be available once each 10-year period when revisions are made to the Per Acre Rent Schedule under section 2885.19(a)(2). Final section 2885.19(a)(2) provides for the revision of the rent schedule (including the number of county zones and the per acre zone values) based upon the NASS Census data from the 2012 NASS Census and each subsequent 10-year period. Therefore, the earliest year that final section 2885.20(b)(2) (the MLA phase-in provision based on hardship) will be available for use is 2016, since the 2012 NASS Census data will not be available until 2014 and any revised rent schedule based upon the 2012 NASS Census data will not be implemented until 2016 (see preamble discussion for section 2806.22). After 2016, final section 2885.20(b)(2) will not be available for use again until 2026, and then not until 2036, and so forth.

In addition to meeting the above criteria, the holder must also prove that payment of the new annual rental amount would cause undue hardship, that is, be such an expense that payment would cause the holder significant difficulty in the continued near-term operation of the subject business or right-of-way facility. Undue hardship is not shown by allegations of financial difficulty, but requires proof that the holder would suffer significant financial difficulty, i.e., severe, unique, or extraordinary difficulty, in the continued near-term operation of the subject business or right-of-way facility. The determination of undue hardship must therefore be made on a case by case basis. The BLM will require the holder to submit information which supports the claim of undue hardship. At a minimum, this information must include a credit bureau report and a financial statement. In addition, the holder must submit information that clearly documents the holder's financial capability to pay the full rental amount due in year two of the phase-in period, if approved. The BLM State Director makes the determination that undue hardship exists based upon a financial analysis of the information submitted which supports the undue hardship claim. If the BLM State Director finds that undue hardship exists and that an additional phase-in is in the public interest, payment of the amount in excess of the previous year's rent will be phased-in by equal increments over a 2-year period. In addition, the BLM will adjust the total calculated rent for year 2 of the phase-in period by the annual index provided by section 2885.19(a)(1).

The BLM believes that many of the concerns expressed by commenters regarding the lack of a comprehensive phase-in provision in the proposed rule have thus been addressed in the final rule by providing more advance notice of potentially large rental increases, reducing the NASS Census land and building value for each county by 20 percent, reducing the rate of return by 18.5 percent (from 6.47 percent to 5.27 percent), reducing the threshold from $1,000 to $500 for payment of annual rent instead of 10-year rental payments, and by waiving 25 percent of the calendar year 2009 rental rates for all authorization holders. These actions combined have eliminated the need for a 5-or 6-year phase-in period because the amount of the increase in rent receipts has been significantly reduced in the final rule. Holders will save nearly $10 million (or 54 percent) when comparing the rates/phase-in provisions contained in the proposed rule with the rates/phase-in provisions contained in the final rule (using actual acres billed for calendar year 2007). The proposed rates would have generated a total of $18,570,871 in 2007 if all acres were billed annually. Under the final rule, including the initial, one-time, 25 percent phase-in provision in rental rates, total rental receipts drop to $8,635,023. Without the initial, one-time, 25 percent phase-in provision, the total rental receipts would have been $11,512,757, or a 38 percent reduction in rental receipts from the proposed rule.

The BLM does not agree with the commenter that proposed limiting potential fee increases each year to no more than 10 percent of the initial per acre rental rate at the time the grant was issued. First, once the final schedule is implemented, increases in rent will be limited to the change in the annual IPD–GDP adjustment (which has historically averaged around 2 to 3 percent). Every 5 years, holders could experience additional rent increases because of the re-assignment of counties to new zones on the rent schedule. However, holders will have approximately 18 months of advance notice to prepare for any potential increases. Thus, most annual rent increases will be significantly less than 10 percent and holders will have adequate notice to prepare for any major increases that might result from counties being assigned to new rental zones based on new NASS Census data.

Secondly, the BLM believes it would be an extreme administrative burden to cap potential annual rent increases at 10 percent per authorization, as this commenter suggested, because grants are always subject to amendments and assignments that can affect the acres subject to rent. It would be very difficult and expensive for the BLM to adequately administer these potential changes and limit rent increases only in response to adjustments in the rent schedule itself, as compared to actual changes in the number of acres billed for that authorization from year to year.

Lastly, the BLM partially agrees with the commenter that said it was critical that the new rates not be implemented prior to January 2009. All existing grants should be billed on the calendar year basis and not their anniversary date. Therefore, the earliest the new rent schedule will apply to existing grants is January 2009, which is consistent with the suggestion of this commenter. However, if the new rent schedule becomes effective in calendar year 2008, the initial rent for new authorizations will be determined in accordance with the new rent schedule, even if the issuance date of the new grant is prior to January 2009.

The BLM does not expect the rental increases to be financially burdensome for most holders. The changes made in the Per Acre Rent Schedule in the final rule represent a permanent reduction of nearly 40 percent over the proposed rates (reducing the NASS Census land and building value for each county by 20 percent and reducing the rate of return by 18.5 percent (from 6.47 percent to 5.27 percent)). We believe that these changes, along with an additional 1-year advance notice of potentially large rental increases, reducing the threshold from $1,000 to $500 for payment of annual rent instead of 10-year rental payments, and by waiving 25 percent of the calendar year 2009 rental rates for all authorization holders, in conjunction with the more flexible rent payment options described in final sections 2806.24 and 2885.21, will provide appropriate relief from any large, unexpected increases in rent payments that are due to implementation of the revised linear rent schedule.

Section 2885.21 How must I make rental payments for a linear grant or TUP?

Final section 2885.21(a) explains that for TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, except those that have been issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years;

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period.

(ii) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

Final section 2885.21(a) replaces the rent payment options in previous section 2885.21(a). The primary difference is that under final section 2885.21(a), individuals who hold a grant with an annual rent greater than $100 would have the option to pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period. Previously, individuals that held a grant with an annual rent greater than $100 would have had the option to pay annually or for any multi-year period. The BLM made this change to make the rent payment options for individuals consistent with those available to non-individuals, except for the annual threshold levels of $100 and $500, respectively. If rent is not paid for the full term, subsequent rental payments will be based on the changes to the rental schedule as described in section 2885.19 (the annual CPI–U index adjustment; the re-assignment of counties each 5-year period; and/or the adjustment to the number and value of rental zones each 10-year period), but the $100 and $500 thresholds used to determine the eligibility for annual payments by individuals and business entities, respectively, will not be adjusted.

Final section 2885.21(b) explains how you must make rent payments for perpetual grants issued prior to November 16, 1973, except as provided by final section 2885.22(a). Previous section 2885.21 did not recognize that MLA grants issued prior to November 16, 1973, could have been issued for any term period, including a perpetual term. Under the MLA, grants issued after November 16, 1973, have a maximum term of 30 years. We added final section 2885.21(b) to explain that if you have an existing perpetual grant, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed 30 years.

Final section 2885.21(c) is nearly identical to previous section 2885.21(b). This section explains that the BLM considers the first partial calendar year in the initial rental payment period to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

Please refer to the preamble discussion for final section 2806.24 for an explanation of the revisions to this section and examples of various rent payment periods, as well as a discussion of any comments received on this section and the BLM's response to those comments.

Section 2885.22 How may I make rental payments when land encumbered by my term or perpetual linear grant is being transferred out of Federal ownership?

Final section 2885.22 explains how you would make one-time rental payments for your term or perpetual linear grant when land encumbered by your grant is being transferred out of Federal ownership.

Final section 2885.22(a) explains how the BLM would determine a one-time rent payment for perpetual MLA grants issued prior to November 16, 1973, when land encumbered by your grant is being transferred out of Federal ownership. If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for perpetual right-of-way grants by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data. The overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula below. The formula for this calculation is: One-time payment = annual rent/(Y − CR), where:

(1) Annual rent = current annual rent applicable to a subject property from the Per Acre Rent Schedule;

(2) Y = yield rate (rate of return) from the Per Acre Rent Schedule (5.27 percent); and

(3) CR = annual percent change in rent as determined by the most recent 10-year average of the difference in the IPD–GDP Index from January of one year to January of the following year.

The annual rent will be determined from the Per Acre Rent Schedule (see section 2885.19(b)), as updated under section 2885.19(a)(1) and (2). However, as final section 2885.22(b) explains, the per acre zone value and zone number used in the annual rental determination is based on the per acre value from acceptable market information or an appraisal, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census. You may also submit an appraisal report on your own initiative under section 2806.25(d).

One commenter recommended that if the BLM uses the appraised land value (as provided by final section 2885.22(b)) to determine the appropriate zone on the rent schedule, then the formula to determine the one-time rent payment, as determined under final section 2885.22(a), should be modified to use the yield rate (Y) rather than the yield rate less the annual percent change in rent (CR). The formula would then be: one-time rent payment = Annual Rent/Y; rather than the one-time payment = Annual Rent/(Y − CR). The commenter said that this change is necessary to avoid the situation where the one-time payment under the appraisal method is greater than the one-time payment under the yield method. The commenter said that the change in the annual index is not necessary since the appraisal method already reflects the current land values for the purposes of calculating the one-time payment. The BLM understands the basis for this comment, but disagrees that it would be an appropriate change to make in this instance. The commenter claims that if appraisal data is used to assign land to a zone on the Per Acre Rent Schedule, then the annual rent adjustment index (CR in the formula) should be excluded from the formula when determining one-time rent. We disagree because the Per Acre Rent Schedule is still being

used to establish the annual per acre rental value and the annual adjustment factor is an inherent component of the schedule. For example, if appraisal data were to be used each 5-year period to re-assign counties to their appropriate zones on the rent schedule, the annual adjustment factor (the annual percent change in rent as determined by the most recent 10-year average of the difference in the IPD–GDP Index from January of one year to January of the following year) would still be applied to determine subsequent year's per acre rent value and would continue until the next appraisal. In situations where the rent schedule is not used in any way to determine the one-time rental payment (such as for easements pursuant to section 2806.26) it might be appropriate to exclude the annual adjustment factor from the above formula, but only if the appraisal report did not provide for an annual adjustment factor. In this circumstance, the Per Acre Rent Schedule (and its various components, including the annual adjustment factor) is still used to determine the annual per acre rent value, which in turn, is used in the income capitalization formula to determine the one-time rent payment.

Final section 2885.22(c) explains that, when no acceptable market information is available and no appraisal has been completed for the land transfer action, or when the BLM requests it, you must prepare an appraisal report as required under section 2806.25(d) of this chapter. We received one comment on this section stating that holders should always have the opportunity to submit their own appraisal report to determine one-time rent for perpetual right-of-way grants when land encumbered by the grant is transferred out of Federal ownership. We agree with the commenter (see discussion for section 2806.25(c) for rationale) and allow for this in the final rule (see section 2885.22(b)). Otherwise, final section 2885.22(c) is the same as proposed.

Section 2885.22(d) is new to the final rule, and explains how rent for a term grant is determined when the land encumbered by the grant is being transferred out of Federal ownership. This section also explains that the amount determined must not exceed the one-time rent payment for a perpetual grant as determined under paragraphs (a) and (b). The BLM added this paragraph to the final rule based upon a comment that stated that in a rare occurrence, the one-time rent payment for term grants could exceed the one-time payment for a perpetual grant. The BLM agrees that, although unlikely, this could occur, but only when one-time rents are being calculated for MLA grants under this section. This situation could not occur for FLPMA authorizations since the holder always has the option of obtaining a perpetual grant, nor would it occur for rents calculated under section 2885.21, since term and perpetual grants are treated equally under that section.

Please refer to the preamble discussion for final section 2806.25 for additional details regarding one-time rent payments for perpetual grants when the land your grant encumbers is being transferred out of Federal ownership.

Subpart 2886—Operations on MLA Grants and TUPs

The BLM is amending one section of this subpart which deals with administration and operations of grants and TUPs.

Section 2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?

This section explains how grant administration is affected if the BLM land your grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership. We proposed no changes to previous paragraphs (a) and (b) of this section. However, previous paragraph (c) was split into proposed paragraphs (c) and (d) to make it clearer.

Although we proposed no changes to section 2886.15(b), we have revised it in the final rule based upon several comments that the proposed formatting of paragraphs (b) and (c) was extremely confusing. We therefore combined proposed paragraph (c) with previous paragraph (b) as follows. Final section 2886.15(b) has been revised to incorporate the intent of proposed paragraph (c) and explains that the BLM will provide reasonable notice to you if there is a proposal to transfer the land your grant or TUP encumbers out of Federal ownership. Furthermore, if you request, the BLM will negotiate new grant or TUP terms and conditions with you. This may include increasing the term of your grant to a 30-year term or replacing your TUP with a grant. These changes, if any, become effective prior to the time the land is transferred out of Federal ownership. The BLM may then, in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant or TUP. In this case, administration of your grant or TUP for the lands the BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but the BLM retains administration of your grant or TUP; or

(3) Reserve to the United States the land your grant or TUP encumbers, and the BLM retains administration of your grant or TUP.

The above changes provide assurance that reasonable notice will be given to all holders of a pending land transfer action and allows, at the holder's request, the opportunity to negotiate new grant or TUP terms and conditions with the BLM. This may include increasing the term of a grant to a 30-year term or replacing a TUP with a grant. Please refer to the preamble discussion in section 2806.26 for the comments received on the issuance of term easements under MLA and the rationale for not providing for term easements in this section. Please refer to the preamble discussion in section 2807.15 above for the comments received on proposed sections 2807.15 and 2886.15 and the rationale for the changes described herein.

Proposed section 2886.15(d) explained that you and the new owner of the land may agree to negotiate new grant terms and conditions at any time after the land encumbered by your grant or TUP is transferred out of Federal ownership. In the final rule, proposed paragraph (d) is renumbered as final paragraph (c) because we incorporated proposed paragraph (c) into final paragraph (b) as discussed above. No other changes were made to this section.

Subpart 2888—Trespass

This rule revises one section of this subpart which pertains to trespass.

Section 2888.10 What is trespass?

Final section 2888.10 is identical to previous section 2888.10 except for a minor edit to paragraph (c). Final section 2888.10(c) does not include the previous reference in section 2888.10 that the rental exemption provisions of part 2800 do not apply to grants issued under this part. This reference is no longer necessary because we added language to final section 2806.14(b), which explains that the rent exemptions listed in final section 2806.14 do not apply if you are in trespass. This includes trespass actions covered under final section 2888.10. Please refer to the preamble discussion for final section 2806.14(b) for further details on the reasons for this change.

Part 2920—Leases, Permits, and Easements

Subpart 2920—Lease, Permits, and Easements: General Provisions

The rule amends two sections of this subpart, which addresses fees and reimbursement of costs.

Section 2920.6 Reimbursement of Costs

Previous section 2920.6(b) has been amended by deleting from the second sentence the phrase ''except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.'' Final section 2920.6(b) explains that the reimbursement of costs for authorizations issued under part 2920 will be in accordance with sections 2804.14 and 2805.16, which provide for the reimbursement of processing and monitoring costs. Previously, any permit whose total rent was less than $250 would have been exempt from reimbursement of processing and monitoring costs.

Section 2920.8 Fees

Previously, section 2920.8(b) provided that each request for renewal, transfer, or assignment of a lease or easement be accompanied by a non-refundable processing fee of $25. Also, the authorized officer could waive or reduce this fee for requests for permit renewals that could be processed with a minimal amount of work. Final section 2920.8(b) amends the previous section by making each request for renewal, transfer, or assignment of a lease or easement subject to both a non-refundable processing and monitoring fee determined under section 2804.14 and section 2805.16. The second sentence of the previous section, which allowed the authorized officer to waive or reduce this fee for permit renewals, is also deleted because fees for actions processed with a minimal amount of work are accounted for in current sections 2804.14 and 2805.16. These revisions are corrections to the 2005 right-of-way rule, which established a schedule for processing and monitoring fees for applications and grants issued under parts 2800, 2880, and 2920. These revisions are necessary to provide the correct cross references to the appropriate processing and monitoring fees found in sections 2804.14 and 2805.16 for actions taken under part 2920.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination as to its significance under Executive Order 12866.

a. This rule does not have an annual 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. A cost-benefit and economic analysis has not been prepared. However, the following economic analysis and calculations supports this conclusion.

Estimated Economic Effects. The rule could potentially increase rental revenues collected by the BLM and, conversely, increase costs to grant holders, by an estimated average of $14.7 million each year (plus annual IPD–GDP adjustments).

Background

The definition of the baseline is an important step in evaluating the economic effects of a regulation. The baseline is taken to be the regulations previously in place. A baseline assumption is that under the status quo, right-of-way activity on Federal lands would continue at least at current levels. Given that the final rule incorporates many suggestions received from industry on the ANPR and the proposed rule, continued right-of-way activity on Federal lands seems a reasonable assumption.

Current Right-of-Way Activity

In 2007 the BLM administered 12,500 rights-of-way subject to linear rent, held by over 1,600 entities, covering approximately 373,000 acres in 15 states. Some right-of-way holders have a single grant, while others hold hundreds of individual grants. Individual right-of-way holdings may be as small as 0.01 acre or larger than 22,000 acres. The top 18 grant-holders (by acreage) account for more than one-half of the total acreage. Eighty percent of the total right-of-way acreage is held by about 4 percent of all grant-holders, while the smallest 1,000 grant-holders account for less than 1 percent of total right-of-way acreage. The breakdown by rental payments is similar to the breakdown by acreage.

Original Rent Schedule

The original 1987 rent schedule was intended to reduce the need for individual appraisals, establish consistent rationale for determination of rental, reduce the differences between procedures used by the FS and the BLM, resolve conflicts which led to numerous appeals of rental determinations, and reduce both government and industry administrative costs. The right-of-way rental rates assessed in 2007 were derived from the 1987 rule's schedule, presented in Tables 7 and 8.

Table 7—Previous per Acre Rent Schedule for electric transmission and distribution lines, telephone lines, non-energy related pipelines, and other linear rights-of-way.

PREVIOUS RULE

[1987 Zone Value × 70% × 6.41% × Annual Change in IPD–GDP (+62% 1987–2007)]

Zone	1987 zone value	2007 actual zone rent
Zone 1	$50	$3.65
Zone 2	100	7.28
Zone 3	200	14.60
Zone 4	300	21.90
Zone 5	400	29.20
Zone 6	500	36.49
Zone 7	600	43.81
Zone 8	1,000	72.97

Table 8—Previous per Acre Rent Schedule for oil, gas, and other energy-related pipelines, roads, ditches, and canals.

PREVIOUS RULE

[1987 Zone Value × 80% × 6.41% × Annual Change in IPD–GDP (+62% 1987–2007)]

Zone	1987 zone value	2007 actual zone rent
Zone 1	$50	$4.17
Zone 2	100	8.32
Zone 3	200	16.71
Zone 4	300	25.00
Zone 5	400	33.39
Zone 6	500	41.70
Zone 7	600	50.03
Zone 8	1,000	83.40

Zone rent for 2007 is based on zone rent for 1987. Zone rent per acre for 1987 is found by determining the correct zone for a right-of-way, then multiplying the zone value (i.e., the upper bracket for land values per acre within a zone) by the EF (70 percent for electric and telephone lines; 80 percent for energy-related pipelines and roads) and the return on investment (6.41 percent). This 1987 zone rent is converted to 2007 zone rent using the change in the IPD–GDP between 1987

and 2007 (approximately a 62 percent increase).

Final Rent Schedule

The zone brackets in the schedule in this final rule are set to accommodate all U.S. counties and the Commonwealth of Puerto Rico, based upon 80 percent of their average per acre land and building value published in the most recent NASS Census. The average per acre land and building values for the 3,080 counties identified in the NASS Census range from a low of $75 to a high of nearly $100,000. Table 9 shows the zone brackets for the 12 zones in the final rule.

TABLE 9—RENTAL ZONES, BASED ON 2002 NASS CENSUS AVERAGE PER ACRE COUNTY LAND AND BUILDING VALUES

2002 Land and building values	Zone
$1 to $250	Zone 1
$251 to $500	Zone 2
$501 to $1,000	Zone 3
$1,001 to $1,500	Zone 4
$1,501 to $2,000	Zone 5
$2,001 to $3,000	Zone 6
$3,001 to $5,000	Zone 7
$5,001 to $10,000	Zone 8
$10,001 to $20,000	Zone 9
$20,001 to $30,000	Zone 10
$30,001 to $50,000	Zone 11
$50,001 to $100,000	Zone 12

For the BLM's purposes, each of the 3,080 counties identified in the NASS Census is assigned to a zone, based on 80 percent of the average per acre land and building value as determined by the most recent NASS Census. At the time of this final rule, the most current NASS Census provides 2002 data. The next NASS Census will provide 2007 data, and is due to be published in 2009.

Determining Right-of-Way Rent

Annual right-of-way rent for 2002 is based on the following factors:

1. Schedule zone, determined by 80 percent of the county's 2002 average per acre land and building value;

2. EF (set at 50 percent for all linear rights-of-way);

3. Government's rate of return, set at the average of the 30-year Treasury bond rate, taken over the 10 years from 1998 to 2008; and

4. Total acreage within the right-of-way area.

The zone rent is adjusted annually by the change in the Gross Domestic Product, Implicit Price Deflator index.

Table 10 shows the right-of-way rent per acre for each zone for the 2002 base rent year. The annual per acre rent in this table is determined by multiplying the county zone value (upper limit) by the EF and the rate of return. The EF is a measure of the degree that a particular type of facility encumbers a right-of-way area or excludes other types of land uses and is set at 50 percent. The rate of return represents the return the Government could reasonably expect for the use of public assets, and is set at the average of the 30-year Treasury bond taken over the previous 10 years from 1998 to 2008 or 5.27 percent. Table 5 also displays the per acre rent values for each county zone for the 2002 base year and each subsequent year after application of the annual index.

TABLE 10—2002 BASE YEAR—PER ACRE RENT SCHEDULE

Zone number	Maximum zone value	Right-of-way annual rental rate*
Zone 1	$250	$6.59
Zone 2	500	13.18
Zone 3	1,000	26.35
Zone 4	1,500	39.53
Zone 5	2,000	52.70
Zone 6	3,000	79.05
Zone 7	5,000	131.75
Zone 8	10,000	263.50
Zone 9	20,000	527.00
Zone 10	30,000	790.50
Zone 11	50,000	1,317.50
Zone 12	100,000	2,635.00

*Per acre right-of-way rent for one year calculated assuming a 50 percent EF and 5.27 percent rate of return.

The total amount a right-of-way grant holder is billed also depends on the number of acres within the right-of-way area that fall within each zone and the years in the rent payment period. Once the per-acre rent has been determined for a particular right-of-way, this amount is multiplied by the total acreage in the right-of-way, and by the number of years in the rent payment period.

Phase-In Provision

The BLM has added an initial phase-in provision for all holders.. The BLM will phase-in the initial implementation of the Per Acre Rent Schedule by reducing the 2009 per acre rent by 25 percent. In calendar year 2009, all holders will pay 75 percent of the scheduled rental rates, and thereafter, 100 percent of the scheduled rental rates. An additional 2-year phase-in period may be granted to holders of MLA grants if, as the result of any revisions made to the Per Acre Rent Schedule under section 2885.19(a)(2), the payment of the new annual rental amount would cause a specific holder undue hardship and it is in the public interest to approve the phase-in. However, only holders of MLA grants that qualify as a small business entity (as that term is defined by the Small Business Administration regulations) will be eligible for this additional phase-in period. Holders of FLPMA grants have the same opportunity for a similar phase-in provision under existing section 2806.15(c).

Estimated Impacts of the Final Schedule

The increase in rental fees could have potential impacts on all holders of right-of-way grants, as well as the energy industry and, ultimately, energy consumers. To the extent that right-of-way grant-holders continue to maintain facilities on public land whose value has increased since 1987, there will also be an increase in rental fees to the U.S. Treasury. Some of the increase in fees may be passed on to energy consumers in the form of higher utility bills, but we expect that if there is any increase, as explained below, it will be minimal.

Tierney and Hibbard (2006) conducted a study (see Tierney, S.F., and Hibbard, P.J., 2006, Energy Policy Act Section 1813 Comments: Report of the Ute Indian Tribe of the Uintah and Ouray Reservation for Submission to the U.S. Departments of Energy and Interior, Boston, MA) of the contribution of right-of-way costs to end-user energy prices, finding that:

1. Right-of-way costs in general are a minor component of regulated electric transmission and gas transportation rates, regardless of how land value changes by location or with time;

2. When viewed from the perspective of end-use consumer prices, the costs to acquire rights-of-way are de minimis; and

3. In the case of gas markets and competitive electricity markets, changes to right-of-way costs generally affect commodity supplier profits, not retail prices.

Based on this analysis, there will likely be no significant impact on consumers as a result of the changes this rule makes to previous regulations.

Estimated Costs Under the Final Schedule

The expected response to an increase in a good's price is a decrease in the quantity demanded of that good. Thus, if the net effect of the rule is to raise a right-of-way grant holder's full cost of maintaining a right-of-way on public land, it would be reasonable to predict a decrease in the number of right-of-way applications. Nevertheless, given the finding by Tierney and Hibbard (2006) that right-of-way costs in general (not

restricted to Federal lands) are a minor portion of total energy transportation costs, no significant decrease in energy right-of-way activity is expected. The BLM also believes for the same reasons that no significant decrease in non-energy right-of-way activity would occur due to the increase in right-of-way costs.

Assuming that right-of-way activity is relatively insensitive to the rental fee, it is possible to estimate the payments that would have been due to the BLM (U.S. Treasury) in FY 2007 had the final schedule been in effect. The following analyses are based on data from the BLM's automated lands billing system (Land and Realty Authorization Module).

In 2007, the BLM issued bills for 12,545 linear right-of-way grants. Approximately half of these bills were for rent payment periods of 5 years or more. The total amount billed for these linear grants was $6.5 million. Had these rights-of-way been paid under the new schedule (for the same rent payment periods), the total collected would have been $14 million, an increase of approximately $7.5 million, or 115 percent. The BLM expects that it will continue to issue approximately the same number of bills for the same number of annual authorizations each year, while the number of bills for multi-year rental payments will continue to decline. It is expected that those authorizations with annual rental payments in excess of $500 will continue to be billed on an annual basis, although the holder has the option to pay for 10-year terms or the entire term of the grant. Under the final rule, the holder will have to pay for a minimum 10-year period if the annual rental payment is $500 or less for a non-individual or $100 or less for an individual. Under the 1987 regulations, the maximum rental payment term was 5 years. The 2005 rule required the holder to pay for the term of the grant, or at 10-year intervals, unless the holder was an individual whose annual rent was greater than $100, in which case, annual payments could have been made.

Table 11 lists the 15 states and the total linear right-of-way acreage within each state that was billed for rent in 2007. If this acreage (373,000) were billed on just an annual basis, the total rent assessed using the previous Per Acre Rent Schedule and previous regulations would be $5.1 million. If this same acreage were assessed annual rent in 2007 using the Per Acre Rent Schedule of this final rule, the total rent would have been $11.5 million, an increase of $6.4 million. Changes in rental payments are due in large part to changes in land values underlying the rights-of-way that have occurred since the previous per acre rent schedule was implemented in 1987. According to the 2006 NASS annual report, between 1987 and 2002, U.S. per acre farm real estate values increased by 102 percent on average. Table 11 shows an increase in annual rent payments of 126 percent. However, if the $11.5 million in 2007 rent receipts were reduced by 11 percent (the percent change in the annual index factor (IPD–GDP) between 2002 and 2007) to $10.2 million, the increase in annual rent payments is 101 percent, or nearly identical to the change in land values in the United States from 1987 to 2002.

The 2007 NASS annual report shows an additional 79 percent increase in U.S. per acre farm real estate values from 2002 to 2007. We expect rent receipts to increase proportionately in 2011, which will be the year that the counties are re-assigned to their proper zone on the Per Acre Rent Schedule based upon 80 percent of their per acre land and building value from the 2007 NASS Census. As mentioned previously, the 2007 NASS Census data will not be available until June 2009 and will not be used to re-assign the counties to their appropriate rent zone until 2011.

TABLE 11—LINEAR RIGHT-OF-WAY ACRES BY STATE: PREVIOUS AND FINAL RENT FOR 2007

State	Acres	1 Year rental (previous rates)	1 Year rental (final rates)	Percentage increase
AZ	25,972.55	$482,096.84	$1,405,313.66	191.50
CA	43,461.11	796,888.69	3,079,639.74	286.46
CO	18,223.78	315,362.80	600,722.06	90.49
ID	22,114.09	351,734.14	949,494.24	169.95
MT	4,908.93	72,353.90	66,009.14	−8.77
ND	42.52	353.76	315.50	−10.82
NE	133.73	973.66	994.50	2.14
NM	81,822.40	839,551.79	959,839.30	14.33
NV	63,254.22	1,114,387.79	2,326,616.45	108.78
OR	10,083.36	125,462.21	417,482.76	232.76
SD	119.33	2,611.72	2,573.20	−1.47
TX	81.64	679.24	4,843.70	613.11
UT	18,149.87	186,804.30	431,210.96	130.84
WA	264.49	5,101.85	37,999.03	644.81
WY	84,351.65	794,070.09	1,229,703.20	54.86
Total	372,983.67	5,088,432.78	11,512,757.44	126.25

Table 12 provides the percent change in land values and the percent change in rent receipts for the 15 counties having over 5,000 billed acres in rights-of-way, as of 2007. Taken together, these 15 counties account for over 53 percent of all right-of-way acres billed by the BLM in 2007, and over 55 percent of the rent collected for 2007. San Bernardino County, California (see Table 12), is a good example of how land values in some counties have risen dramatically in the last 20 years. This southern California county had 24,822 acres of public land encumbered by authorized right-of-way facilities that were billed for rent in 2007 using the previous rent schedule. The previous schedule was based on a 1987 land value of $200 per acre for San Bernardino County, meaning that these holdings were valued at a total of $5 million in 1987. Applying the IPD–GDP factor used in the previous schedule increased the value of this land to $7.1 million in 2002. The 2002 NASS land and building data lists San Bernardino County at $2,144 per acre, for a total value of $53.2 million. This data indicates that in this example the Federal Government was

basing linear right-of-way rents on only 13.3 percent of the 2002 land value, largely due to the rapid increase in land values in southern California since 1987. Furthermore, the NASS annual reports show that between 2002 and 2007 farm real estate values have increased an average of 79 percent nationwide. A continued trend of rising real estate values would have led to further undervaluation by the previous schedule. As a result, had the BLM used the Per Acre Rent Schedule of this final rule to assess rent for linear right-of-way acres in San Bernardino County in FY 2007, rental receipts would have increased nearly 300 percent (see Table 12).

In contrast, land values in most counties in New Mexico and Wyoming, where the majority of linear rights-of-way are located, have increased at a much slower rate than the national average. Had the final rent schedule been in effect for 2007, most counties in these 2 states would have experienced only modest increases in rents due, or even decreases. For example, in San Juan County, New Mexico, where between 1987 and 2002 the value of land increased by over 200 percent, rents would have increased by 79 percent. In Sweetwater County, Wyoming, where between 1987 (per BLM's per acre rent schedule) and 2002 (per the NASS Census data) land values have actually fallen, rents would have been almost flat, decreasing by 7 percent. These lower land values in New Mexico and Wyoming would result in only a 14 percent and a 55 percent increase, respectively, in the total rental receipts, statewide, for 2007 (as compared to a 286 percent increase for California and a 126 percent increase for all BLM states) when using the Per Acre Rent Schedule of this final rule as compared with the total rental receipts for 2007 when using the previous Per Acre Rent Schedule (see Table 11).

TABLE 12—PERCENT CHANGE IN LAND VALUES AND RENT RECEIPTS BY COUNTIES WITH 5,000 OR MORE ACRES BILLED FOR RIGHT-OF-WAY FACILITIES ON PUBLIC LAND IN 2007

County	State	Right-of-Way acres	1987 Assigned land value	2002 NASS Census land value	Percent change in land value	2007 Assessed rent using previous schedule	2007 Assessed rent using final schedule	Percent increase in rent receipts
Sweetwater	WY	28,420	$100	$98	−2	$227,684	$210,877	−7
San Bernardino	CA	24,822	200	2,144	972	377,399	1,472,668	290
San Juan	NM	24,523	100	324	224	202,640	363,679	79
Eddy	NM	21,456	100	255	155	173,465	159,205	−8
Clark[a]	NV	13,780	50	3,567	7,034	51,676	1,226,454	2273
White Pine	NV	12,458	50	544	988	45,564	184,749	305
Lea	NM	10,215	100	156	56	82,787	75,798	−8
Sublette	WY	9,833	100	733	633	79,966	291,755	265
Maricopa	AZ	9.544	400	3,026	657	284,502	849,455	199
Lincoln	WY	8,362	100	906	806	65,110	248,087	281
Rio Arriba	NM	8,301	200	328	64	138,217	123,101	−11
Carbon	WY	8,073	100	214	114	64,019	59,903	−6
Rio Blanco	CO	6,871	200	669	235	113,709	203,855	79
Fremont	WY	6,167	100	311	211	49,378	45,758	−7
Eureka	NV	5,095	50	230	360	18,691	37,803	102
Subtotal		197,920	107	778	627	1,974,809	5,553,149	181
Clark County Sub-Zones	NV	876	[b]14,001	3,567	−75	852,466	77,952	−91
Total		198,796				2,827,275	5,631,101	99

[a] Entries for Clark County do not include rights-of-way in Clark County ''unique zones.''
[b] 1987 Assigned Land Value for Clark County ''unique zones'' is a weighted average across 8 unique zones there.

While the land values in certain counties in New Mexico and Wyoming increased modestly from 1987 to 2002, the land values in Clark County, Nevada, as shown in Table 12, increased dramatically (7,034 percent) during this time period. Much of this increase can be attributed to the tremendous growth rate and demand for undeveloped land in and surrounding Las Vegas, Nevada, the largest city in Clark County as well as the state of Nevada. In recognition of these higher land values in the Las Vegas area, a ''unique zone'' Per Acre Rent Schedule with 8 zones whose land values ranged from $4,000 to $75,000 per acre was established in 1987 under the 1987 regulations. The annual per acre rent values ranged from approximately $300 to $6,000 (in 2007). The BLM used the ''unique zone'' Per Acre Rent Schedule (see Section I Background of this preamble for additional information on the ''unique zone'' Per Acre Rent Schedule) to assess rent ($853,000 in 2007) for approximately 80 right-of-way grants in the Las Vegas area which were issued within the ''unique zone'' areas prior to 2002. In addition, another 225 rights-of-way were located within the Las Vegas ''unique zone'' area, but the BLM used the 1987 Per Acre Rent Schedule to determine annual rent for these rights-of-way in accordance with Washington Office Instruction Memorandum 2002–172. Had the BLM used the ''unique zone'' rates to determine rent for these 225 grants, an additional $2.4 million would have been collected in 2007 (based on an average annual rent payment of $10,663 for each of the 80 right-of-way grants subject to the ''unique zone'' rates in 2007). So instead of $51,676 in assessed rent for linear rights-of-way in Clark County for 2007, as shown in Table 12, a more appropriate figure for comparison purposes, using the ''unique zone'' rates for all 305 rights-of-way located within these high land value areas, would have been approximately $3.3 million. Under the Per Acre Rent Schedule of this final rule, that figure would have then decreased to $1.23 million, resulting in a 63 percent decrease in rental receipts, instead of the 2,273 percent increase as shown in Table 12. However, the actual percent increase in rent receipts in Clark County is only 46 percent when total

receipts collected from the previous rent schedules ($904,142) are compared to what would have been collected using the Per Acre Rent Schedule of this final rule for 2007 ($1,304,400).

In summary, the final rule will increase rental revenues collected by the BLM and, conversely, increase costs to grant holders by approximately $6.4 million, based on 2007 billing data. The BLM assessed rent for rights-of-way on 373,000 acres of public land in 2007 (see Table 11). If this acreage had been billed only on an annual basis, the BLM would have assessed rent in the amount of $5,088,433 using the previous Per Acre Rent Schedule. Under the final rule, the BLM would have assessed rent in the amount of $11,512,757 (with no phase-in provision), or an increase of $6,424,325. These increases in rental receipts would have reasonably reflected the increase in land values that also occurred from 1987 to 2002. Likewise, the BLM estimates that the maximum amount that rental receipts will increase under the final rule is an average of $14.7 million each year (plus annual IPD GDP adjustments) when all authorizations and rent payment periods are considered (using 2007 as a sample year). This amount ($14.7 million) is based on average estimated rental receipts of $21 million per year over a 5-year period (2009–2013), less the $6.3 million in actual rental receipts collected in 2007 for all authorizations and rent payment periods billed ($21 million − $6.3 million = $14.7 million).

In addition to revising the previous Per Acre Rent Schedule, the final rule makes minor revisions to parts 2800 and 2880 of the previous regulations so that the final regulations are consistent with the statutory rent schedule changes discussed above. There are also a number of minor corrections and changes made in the final rule that are not directly related to the rent schedule. These changes are limited in scope and address trespass penalties, new rent payment options (including how one-time payments are to be determined for perpetual right-of-way grants and easements), annual rental payments, limited phase-in provisions for all holders, and reimbursements of monitoring costs and processing fees for leases and permits issued under 43 CFR part 2920. These latter items correct some errors in the previous regulations and clarify other regulations. All these changes are within the scope of the BLM's existing authority to administer rights-of-way under the FLPMA and the MLA and will have only minor economic impact.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. Since 1987, the BLM and the FS have both used the same Per Acre Rent Schedule to establish rent for linear right-of-way facilities located on public land and NFS land. The Act requires both the BLM and the FS to make the same revisions to the 1987 per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone. The BLM has worked closely with the FS in assuring the maximum consistency possible between the policies of the two agencies with respect to approving and administering linear rights-of-way, including the assessment of rent for these facilities. The FS plans to adopt the BLM Per Acre Rent Schedule.

c. The final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does increase rental fees, but only in amounts necessary to ensure compliance with the Act. The increases in rental fees will not be retroactive, but they will apply to new authorizations and to existing grant-holders who hold grants subject to rent at the grant's next rental due payment period. Flexible rent payment options and phase-in provisions will significantly reduce any impact that increased rental fees may have on grant-holders. Rent exemption and reduction provisions found in the current rule still apply. However, the final rule makes it clear that if an entity is found to be in trespass on public land, the rental exemptions and/or waiver of rent provisions will not apply to settlement of the trespass action.

d. The final rule will not raise novel legal or policy issues. The Act requires the BLM and the FS to update and revise previous per acre rent schedules to reflect current land values. Both agencies previously collected rental fees for linear rights-of-way using a per acre rent schedule established in 1987. The Act does not specify how to revise the land values or what data should be used. The final rule uses average per acre land and building values published every 5 years in the NASS Census. Other Federal and state agencies regularly use the NASS Census data when necessary to use average per acre land values for a particular State or county. Congress, likewise, endorsed the use of this data for rental determination purposes when it passed the ''National Forest Organizational Camp Fee Improvement Act of 2003'' (Public Law 108–7) (16 U.S.C. 6231). The BLM believes that the rental fees arrived at by the use of the NASS Census data is the most efficient and reasonable method of revising the previous Per Acre Rent Schedule, as well as meeting other mandates under FLPMA and the MLA that require that the U.S. receive fair market value of the use of the public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. In the proposed rule, we invited your comments on how to make these regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?

2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?

3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading, for example: § 2806.20 What is the rent for a linear right-of-way grant?).

5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

We received no specific comments in response to the above 5 questions. However, we received several comments suggesting that we clarify the language in proposed sections 2807.15 and 2886.15, which we have accomplished in this final rule. In addition, one commenter requested clarification of the meaning of the phrase ''When no acceptable market information is available'' as used in proposed section 2806.25(d) and asked whether the lack of acceptable market data would allow the BLM to utilize a process to determine per acre land values similar to that used in lower value Federal land acquisitions known as ''waiver valuations.'' We provided that clarification in the preamble discussion to that section.

National Environmental Policy Act (NEPA)

The BLM has determined that this final rule, which primarily updates the previous linear rent schedule, is of an administrative, financial, and/or procedural nature whose environmental effects are too broad, speculative, or

conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Number 1.10. In addition, the final rule does not meet any of the 12 criteria for extraordinary circumstances listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

We have also examined this rule to determine whether it requires consultation under Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1532). The ESA requires an agency to consult with the Fish and Wildlife Service or National Marine Fisheries Service to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

We have determined that this rule will have no effect on listed or proposed species or on designated or proposed critical habitat under the ESA and therefore consultation under section 7 of the ESA is not required. Our determination is based in part on the fact that nothing in the rule changes existing processes and procedures that ensure the protection of listed or proposed species or designated or proposed critical habitat. Existing processes and procedures have been in effect since BLM promulgated right-of-way regulations in 1979–80. Any further compliance with the ESA will occur when an application for a right-of-way is filed with the BLM.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The BLM has estimated that approximately 18 percent of all applicants and grantees (approximately 5 percent of MLA applicants and grantees and approximately 23 percent of FLPMA applicants and grantees) may qualify as small entities. As discussed above, rental fees, in most cases, are not a significant cost for the industries affected, including small entities.

Table 13 shows the small business size standards for industries that may be affected by these rules. This table lists industry size standards for eligibility for Small Business Administration (SBA) programs from SBA regulations (see 13 CFR 121.201). The SBA size standards are typically stated either as the average number of employees, or the average annual receipts of a business concern. Standards are grouped using the North American Industrial Classification System 2002 (NAICS). This listing is based on descriptions from the U.S. Bureau of the Census 2002 NAICS codes and is not exhaustive.

TABLE 13—SBA SIZE STANDARDS FOR AFFECTED INDUSTRIES AS OF JULY 31, 2006

NAICS code	Description	Size standard
113110	Timber Tract Operations	$6.5 million.
113210	Gathering of forest products	$6.5 million.
113310	Logging	500 employees.
211111	Crude petroleum and natural gas extraction	500 employees.
211112	Natural gas liquid extraction	500 employees.
221111	Hydroelectric power generation.	
221112	Fossil fuel electric power generation.	
221113	Nuclear electric power generation.	
221119	Other electric power generation.	
221121	Electric Bulk Power Transmission and Control.	
221122	Electric Power Distribution	Firm, including affiliates, is primarily engaged in generation, transmission, or distribution of electric energy for sale, and total electric output for the preceding fiscal year ≤ 4 million megawatt-hours.
221210	Natural Gas Distribution	500 employees.
221310	Water Supply and Distribution System	$6.5 million.
486110	Pipeline Transportation: Crude Oil	1,500 employees.
486210	Pipeline Transportation: Natural Gas	$6.5 million
486910	Pipeline Transportation: Refined Petroleum Products	1,500 employees.
486990	Pipeline Transportation: All other products	$21.5 million.

The BLM does not officially track right-of-way costs, but grant holders in 2003 estimated that construction costs for pipeline facilities were between $300,000 (12″ pipeline) and $1.5 million per mile (36″ pipeline); construction costs for rocked logging roads were between $40,000/mile for a ridge top road to $150,000/mile for a full bench road or an average of $70,000/mile for a road through moderate terrain; and construction costs for electric distribution and transmission lines were between $24,000/mile (24kV distribution line) to $1 million/mile (500kV transmission line). Larger projects would typically require more land area to site than minor projects. Since rent is based on the number of acres that the right-of-way facility encumbers, larger projects would involve higher rental payments than would minor projects. However, compared to the cost of constructing a typical right-of-way facility, total rent and the rental fee increases under the final rule are relatively small (see 70 FR 21056 for further information on typical project costs).

Any of the industries listed in Table 13 may hold right-of-way grants with the BLM, under either FLPMA or MLA, as a part of their business practices. For example, bulk electric power transmission firms will use rights-of-way to distribute their electricity. Firms may be eligible for various SBA programs, but the size-limit is specific to each industry, and identified by the industry codes. The limit may be based on gross sales, the number of employees, or other factors. It is estimated that about 5.3 percent (or 1,416 of 26,711) of existing MLA grantees may be eligible for SBA programs and about 22.9 percent (or 14,280 of 62,358) of FLPMA grantees may be eligible for SBA programs (see 70 FR 21056). Whether they choose to join the SBA programs is strictly an individual firm's decision.

The proportion of grantees eligible for SBA programs indicates that there is an opportunity for small businesses in BLM's right-of-way program. However, the burden of increased rental fees will not have a significant economic impact on a substantial number of small entities or fall disproportionately on small businesses. Moreover, any entity that believes that it might be adversely affected by the rental fee increases to its FLPMA right-of-way grant may qualify for a waiver or reduction of rental fees under any of the provisions, including hardship, found at section 2806.15. Therefore, the BLM has determined under the RFA that this final rule does not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. See the Executive Order 12866 discussion above.

b. Will not result in major cost or price increases for consumers, industries, government agencies, or regions. As discussed above, when compared to the cost of constructing a right-of-way project, the rental fee increases contained in this rule are relatively small and therefore will not cause any major increase in costs or prices. In addition, any applicant or holder of a FLPMA authorization that believes that the rental fee increases will cause difficulty may benefit from the rent waiver or reduction provisions under section 2806.15, especially the hardship provision.

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 rule should result in no change in any of the above factors. See the Executive Order 12866 discussion above regarding the economic effects of the rental fee increases. In general, the rental fee increases are small in comparison with the overall costs of constructing, maintaining, operating, and terminating large projects located within right-of-way areas. With the possible exception of MLA grants for pipelines, the projects located on right-of-way grants support domestic, not foreign, activities and do not involve products and services that are exported. The MLA pipelines may transport oil and gas and their related products destined for foreign markets, but the overall increase in rental fees, compared to the cost of, and profits from, running an oil and gas pipeline that would feed into a foreign market, is minimal.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more per year; nor does this rule have a significant or unique effect on small governments. The rule imposes no requirements approaching $100 million annually on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that this rule does not have effects approaching $100 million per year on the economy. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1532.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The rule does not have takings implications and is not government action capable of interfering with constitutionally protected property rights. A right-of-way application is not private property. The BLM has discretion under the governing statutes to issue a grant or not (see 30 U.S.C. 185(a) and 43 U.S.C. 1761(a)). Once a grant is issued, a holder's continued use of the Federal land covered by the grant is conditioned upon compliance with various statutes, regulations, and terms and conditions, including the payment of rent. Consistent with FLPMA and the MLA, violation of the relevant statutes, regulations, or terms and conditions of the grant can result in termination of the grant before the end of the grant's term. The holder of a grant acknowledges this possibility in accepting a grant. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the levels of government. Qualifying states and local governments continue to be exempt from paying rent for a right-of-way grant issued under FLPMA. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. The BLM may only issue right-of-way grants across public lands that it manages or across Federal lands held by two or more Federal agencies. Indian tribes have jurisdiction over their own lands, subject to the Secretary's trust responsibility. To our knowledge, no Indian tribes are involved in any multi-agency grants.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the final rule is not a significant energy action. The rule is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant effect on energy supply, distribution or use, including a shortfall in supply or price increase. In addition, the rule has not been designated as a significant energy action by the Chief of the Office of Information and Regulatory Affairs. However, since the final rent schedule is based on average per acre land values which have generally

increased over the past 20 years, rental receipts are expected to increase in a like proportion, but still remain a minor component of overall costs and/or rates. In addition, the rule preserves existing rental exemption and waiver provisions for holders of FLPMA authorizations, provides an initial phase-in period to all holders, and provides more flexible rent payment options that were lacking in the previous regulation.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety. This rule does not change any provision of the BLM's previous right-of-way rule which facilitates cooperative conservation in the authorization and administration of right-of-way facilities on public lands. The rule maintains all alternatives for maximum protection of right-of-way facilities when the land encumbered by the facilities is proposed for transfer out of Federal ownership. The grant holder will also have the opportunity to negotiate new terms and conditions with the new land owner, if the holder so desires. The rule does not reduce or eliminate any current provision that requires the BLM to coordinate and consult with other affected and/or interested parties in the granting or administering of right-of-way facilities on public land, including the requirements that the BLM places on right-of-way holders to protect public health and safety, as well as public resources and environmental quality.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* and has assigned clearance number 1004–0189, which expires on November 30, 2008.

Authors

The principal authors of this rule are Bil Weigand, BLM Idaho State Office, and Rick Stamm, BLM Washington Office, assisted by Ian Senio of BLM's Division of Regulatory Affairs, Washington Office, and Michael Hickey of the Office of the Solicitor.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Penalties, Public lands and rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Public lands rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2920

Penalties, Public lands, and Reporting and recordkeeping requirements.

Dated: October 15, 2008.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and under the authorities identified below, the BLM amends 43 CFR parts 2800, 2880, and 2920 as set forth below:

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY MANAGEMENT ACT

■ 1. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, and 1764.

Subpart 2805—Terms and Conditions of Grants

■ 2. Amend § 2805.11 by revising paragraph (b)(2) to read as follows:

§ 2805.11 What does a grant contain?

* * * * *

(b) * * *

(2) All grants, except those issued for a term of 3 years or less and those issued in perpetuity, will expire on December 31 of the final year of the grant.

* * * * *

■ 3. Amend § 2805.14 by revising paragraph (f) to read as follows:

§ 2805.14 What rights does a grant convey?

* * * * *

(f) Assign the grant to another, provided that you obtain the BLM's prior written approval, unless your grant specifically states that that such approval is unnecessary.

Subpart 2806—Rents

■ 4. Amend § 2806.14 by redesignating the introductory text and paragraphs (a), (b), (b)(1), (b)(2), (c), and (d) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(3), and (a)(4), respectively, and by adding a new paragraph (b) to read as follows:

§ 2806.14 Under what circumstances am I exempt from paying rent?

* * * * *

(b) The exemptions in this section do not apply if you are in trespass.

■ 5. Revise § 2806.20 to read as follows:

§ 2806.20 What is the rent for a linear right-of-way grant?

(a) Except as described in § 2806.26 of this chapter, the BLM will use the Per Acre Rent Schedule (see paragraph (c) of this section) to calculate rent for all linear right-of-way authorizations, regardless of the granting authority (FLPMA, MLA, and their predecessors). Counties (or other geographical areas) are assigned to an appropriate zone in accordance with § 2806.21. The BLM will adjust the per acre rent values in the schedule annually in accordance with § 2806.22(a), and it will revise the schedule at the end of each 10-year period in accordance with § 2806.22(b).

(b) The annual per acre rent for all types of linear right-of-way facilities is the product of 4 factors: The per acre zone value multiplied by the encumbrance factor multiplied by the rate of return multiplied by the annual adjustment factor (see § 2806.22(a)).

(c) You may obtain a copy of the current Per Acre Rent Schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov*.

■ 6. Redesignate §§ 2806.21, 2806.22, and 2806.23 as §§ 2806.22, 2806.23, and 2806.24, respectively, and add new § 2806.21 to read as follows:

§ 2806.21 When and how are counties or other geographical areas assigned to a County Zone Number and Per Acre Zone Value?

Counties (or other geographical areas) are assigned to a County Zone Number and Per Acre Zone Value based upon 80 percent of their average per acre land and building value published in the Census of Agriculture (Census) by the National Agricultural Statistics Service (NASS). The initial assignment of counties to the zones will cover years 2006 through 2010 of the Per Acre Rent Schedule and is based upon data contained in the most recent NASS Census (2002). Subsequent re-assignments of counties will occur every 5 years (in 2011 based upon 2007 NASS Census data, in 2016 based upon 2012 NASS Census data, and so forth)

following the publication of the NASS Census.

■ 7. Revise redesignated § 2806.22 to read as follows:

§ 2806.22 When and how does the Per Acre Rent Schedule change?

(a) Each calendar year the BLM will adjust the per acre rent values in § 2806.20 for all types of linear right-of-way facilities in each zone based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available. For example, the average annual change in the IP–GDP from 1994 to 2003 (the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available) is 1.9 percent. This annual adjustment factor is applied to years 2006 through 2015 of the Per Acre Rent Schedule. Likewise, the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) will be applied to years 2016 through 2025 of the Per Acre Rent Schedule.

(b) The BLM will review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect the increases or decreases in the average per acre land and building values contained in the NASS Census.

■ 8. Revise redesignated § 2806.23 to read as follows:

§ 2806.23 How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

(a) Except as provided by §§ 2806.25 and 2806.26, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way area that fall in each zone and multiplying the result by the number of years in the rental payment period (the length of time for which the holder is paying rent).

(b) The BLM will phase-in the initial implementation of the Per Acre Rent Schedule (see § 2806.20(c)) by reducing the 2009 per acre rent by 25 percent.

(c) If the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

■ 9. Revise redesignated § 2806.24 to read as follows:

§ 2806.24 How must I make rental payments for a linear grant?

(a) *Term grants.* For linear grants, except those issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period.

(ii) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

(b) *Perpetual grants.* For linear grants issued in perpetuity (except as noted in §§ 2806.25 and 2806.26), you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed 30 years.

(c) *Proration of payments.* The BLM considers the first partial calendar year in the initial rental payment period (the length of time for which the holder is paying rent) to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

■ 10. Add new §§ 2806.25 and 2806.26 to read as follows:

§ 2806.25 How may I make rental payments when land encumbered by my perpetual linear grant (other than an easement issued under § 2807.15(b)) is being transferred out of Federal ownership?

(a) *One-time payment option for existing perpetual grants.* If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for a perpetual grant by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data, where the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula in paragraphs (a)(1), (2), and (3) of this section. The formula for this calculation is: One-time Rental Payment = Annual Rent/ $(Y - CR)$, where:

(1) Annual Rent = Current Annual Rent Applicable to the Subject Property from the Per Acre Rent Schedule;

(2) Y = Yield Rate from the Per Acre Rent Schedule (5.27 percent); and

(3) CR = Annual Percent Change in Rent as Determined by the Most Recent 10-Year Average of the difference in the IPD–GDP Index from January of one year to January of the following year.

(b) *One-time payment for grants converted to perpetual grants under § 2807.15(b).* If the land your grant encumbers is being transferred out of Federal ownership, and you request a conversion of your grant to a perpetual right-of-way grant, you must make a one-time rental payment in accordance with § 2806.25(a).

(c) In paragraphs (a) and (b) of this section, the annual rent is determined from the Per Acre Rent Schedule (see § 2806.20(c)) as updated under § 2806.22. However, the per acre zone value and zone number used in this annual rental determination will be based on the per acre land value from acceptable market information or the appraisal report, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census. You may also submit an appraisal report on your own initiative in accordance with paragraph (d) of this section.

(d) When no acceptable market information is available and no appraisal report has been completed for the land transfer action or when the BLM requests it, you must:

(1) Prepare an appraisal report using Federal appraisal standards, at your expense, that explains how you estimated the land value per acre, the

rate of return, and the encumbrance factor; and

(2) Submit the appraisal report for consideration by the BLM State Director with jurisdiction over the lands encumbered by your authorization.

§ 2806.26 How may I make rental payments when land encumbered by my perpetual easement issued under § 2807.15(b) is being transferred out of Federal ownership?

(a) The BLM will use the appraisal report for the land transfer action (i.e., direct or indirect land sales, land exchanges, and other land disposal actions) and other acceptable market information to determine the one-time rental payment for a perpetual easement issued under § 2807.15(b).

(b) When no acceptable market information is available and no appraisal report has been completed for the land transfer action or when the BLM requests it, you must prepare an appraisal report as required under § 2806.25(d). You may also submit an appraisal report on your own initiative in accordance with § 2806.25(d).

Subpart 2807—Grant Administration and Operation

■ 11. Amend § 2807.15 by revising paragraph (b) and paragraph (c) to read as follows:

§ 2807.15 How is grant administration affected if the land my grant encumbers is transferred to another Federal agency or out of Federal ownership?

* * * * *

(b) The BLM will provide reasonable notice to you if there is a proposal to transfer the land your grant encumbers out of Federal ownership. If you request, the BLM will negotiate new grant terms and conditions with you. This may include increasing the term of your grant to a perpetual grant or providing for an easement. These changes, if any, become effective prior to the time the land is transferred out of Federal ownership. The BLM may then, in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant or easement. In this case, administration of your grant or easement for the lands BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant or easement; or

(3) Reserve to the United States the land your grant or easement encumbers, and BLM retains administration of your grant or easement.

(c) You and the new land owner may agree to negotiate new grant terms and conditions any time after the land encumbered by your grant is transferred out of Federal ownership.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

■ 12. The authority citation for part 2880 continues to read as follows:

Authority: 30 U.S.C. 185 and 189.

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

■ 13. Amend § 2885.11 by revising the first sentence of paragraph (a) to read as follows:

§ 2885.11 What terms and conditions must I comply with?

(a) *Duration.* All grants, except those issued for a term of 3 years or less, will expire on December 31 of the final year of the grant. * * *

* * * * *

■ 14. Amend § 2885.12 by revising paragraph (e) to read as follows:

§ 2885.12 What rights does a grant or TUP convey?

* * * * *

(e) Assign the grant or TUP to another, provided that you obtain the BLM's prior written approval, unless your grant or TUP specifically states that such approval is unnecessary.

■ 15. Revise § 2885.19 to read as follows:

§ 2885.19 What is the rent for a linear right-of-way grant?

(a) The BLM will use the Per Acre Rent Schedule (see paragraph (b) of this section) to calculate the rent. Counties (or other geographical areas) are assigned to a County Zone Number and Per Acre Zone Value based upon 80 percent of their average per acre land and building value published in the NASS Census. The initial assignment of counties to the zones in the Per Acre Rent Schedule for the 5-year period from 2006 to 2010 is based upon data contained in the most recent NASS Census (2002). Subsequent assignments of counties will occur every 5 years following the publication of the NASS Census. The Per Acre Rent Schedule is also adjusted periodically as follows:

(1) Each calendar year the BLM will adjust the per acre rent values in §§ 2806.20 and 2885.19(b) for all types of linear right-of-way facilities in each zone based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available. For example, the average annual change in the IPD–GDP from 1994 to 2003 (the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available) is 1.9 percent. This annual adjustment factor is applied to years 2006 through 2015 of the Per Acre Rent Schedule. Likewise, the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) will be applied to years 2016 through 2025 of the Per Acre Rent Schedule.

(2) The BLM will review the NASS Census data from the 2012 NASS Census, and each subsequent 10-year period, and as appropriate, revise the number of county zones and the per acre zone values. Any revision must include 100 percent of the number of counties and listed geographical areas for all states and the Commonwealth of Puerto Rico and must reasonably reflect the increases or decreases in the average per acre land and building values contained in the NASS Census.

(b) You may obtain a copy of the current Per Acre Rent Schedule from any BLM State Office or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. The BLM also posts the current rent schedule on the BLM Homepage on the Internet at *http://www.blm.gov.*

■ 16. Revise § 2885.20 to read as follows:

§ 2885.20 How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?

(a) Except as provided by § 2885.22, the BLM calculates your rent by multiplying the rent per acre for the appropriate county (or other geographical area) zone from the current schedule by the number of acres (as rounded up to the nearest tenth of an acre) in the right-of-way or TUP area that fall in each zone and multiplying the result by the number of years in the rental payment period (the length of time for which the holder is paying rent).

(b) Phase-in provisions:

(1) The BLM will phase-in the initial implementation of the Per Acre Rent Schedule (see § 2885.19(b)) by reducing the 2009 per acre rent by 25 percent.

(2) If, as the result of any revisions made to the Per Acre Rent Schedule under § 2885.19(a)(2), the payment of your new annual rental amount would cause you undue hardship, you may qualify for a 2-year phase-in period if you are a small business entity as that term is defined in Small Business

Administration regulations and if it is in the public interest. The BLM will require you to submit information to support your claim. If approved by the BLM State Director, payment of the amount in excess of the previous year's rent may be phased-in by equal increments over a 2-year period. In addition, the BLM will adjust the total calculated rent for year 2 of the phase-in period by the annual index provided by § 2885.19(a)(1).

(c) If the BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

■ 17. Revise § 2885.21 to read as follows:

§ 2885.21 How must I make rental payments for a linear grant or TUP?

(a) *Term grants or TUPs.* For TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, except those that have been issued in perpetuity, you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the total rent amount for the entire term of the grant or any remaining years.

(2) *Multiple payments.* If you choose not to make a one-time payment, you must pay according to one of the following methods:

(i) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed the term of the grant. For example, if you have a grant with a remaining term of 30 years, you may pay in advance for 10 years, 20 years, or 30 years, but not any other multi-year period.

(ii) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed the term of the grant. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed the term of the grant.

(b) *Perpetual grants issued prior to November 16, 1973.* Except as provided by § 2885.22(a), you must make either nonrefundable annual payments or a nonrefundable payment for more than 1 year, as follows:

(1) *Payments by individuals.* If your annual rent is $100 or less, you must pay at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $100, you may pay annually or at 10-year intervals, not to exceed 30 years.

(2) *Payments by all others.* If your annual rent is $500 or less, you must pay rent at 10-year intervals, not to exceed 30 years. If your annual rent is greater than $500, you may pay annually or at 10-year intervals, not to exceed 30 years.

(c) *Proration of payments.* The BLM considers the first partial calendar year in the initial rental payment period (the length of time for which the holder is paying rent) to be the first year of the term. The BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

■ 18. Redesignate §§ 2885.22, 2885.23, and 2885.24 as §§ 2885.23, 2885.24, and 2885.25, respectively, and add new § 2885.22 to read as follows:

§ 2885.22 How may I make rental payments when land encumbered by my term or perpetual linear grant is being transferred out of Federal ownership?

(a) *One-time payment option for existing perpetual grants issued prior to November 16, 1973.* If you have a perpetual grant and the land your grant encumbers is being transferred out of Federal ownership, you may choose to make a one-time rental payment. The BLM will determine the one-time payment for perpetual right-of-way grants by dividing the current annual rent for the subject property by an overall capitalization rate calculated from market data, where the overall capitalization rate is the difference between a market yield rate and a percent annual rent increase as described in the formula in paragraphs (a)(1), (2), and (3) of this section. The formula for this calculation is: One-time Payment = Annual Rent/(Y − CR), where:

(1) Annual Rent = Current Annual Rent Applicable to the Subject Property from the Per Acre Rent Schedule;

(2) Y = Yield Rate from the Per Acre Rent Schedule (5.27 percent); and

(3) CR = Annual Percent Change in Rent as Determined by the Most Recent 10-Year Average of the difference in the IPD–GDP Index from January of one year to January of the following year.

(b) In paragraph (a) of this section, the annual rent is determined from the Per Acre Rent Schedule (see § 2885.19(b)), as updated under § 2885.19(a)(1) and(2). However, the per acre zone value and zone number used in this annual rental determination will be based on the per acre land value from acceptable market information or an appraisal report, if any, for the land transfer action and not the county average per acre land and building value from the NASS Census. You may also submit an appraisal report on your own initiative in accordance with § 2806.25(d) of this chapter.

(c) When no acceptable market information is available and no appraisal report has been completed for the land transfer action, or when the BLM requests it, you must prepare an appraisal report as required under § 2806.25(d) of this chapter.

(d) *Term Grant.* If the land your grant encumbers is being transferred out of Federal ownership, you may pay in advance the total rent amount for the entire term of the grant or any remaining years. The BLM will use the annual rent calculated from the Per Acre Rent Schedule multiplied by the number of years in the rent payment period (the length of time for which the holder is paying rent) to determine the one-time rent. However, this amount must not exceed the one-time rent payment for a perpetual grant as determined under paragraphs (a) and (b) of this section.

Subpart 2886—Operations On MLA Grants and TUPs

■ 19. Amend § 2886.15 by revising paragraphs (b) and (c) to read as follows:

§ 2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?

* * * * *

(b) The BLM will provide reasonable notice to you if there is a proposal to transfer the BLM land your grant or TUP encumbers out of Federal ownership. If you request, the BLM will negotiate new grant or TUP terms and conditions with you. This may include increasing the term of your grant to a 30-year term or replacing your TUP with a grant. These changes, if any, become effective prior to the time the land is transferred out of Federal ownership. The BLM may then, in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant or TUP. In this case, administration of your grant or TUP for the lands BLM formerly administered is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant or TUP; or

(3) Reserve to the United States the land your grant or TUP encumbers, and BLM retains administration of your grant or TUP.

(c) You and the new land owner may agree to negotiate new grant or TUP terms and conditions any time after the land encumbered by your grant or TUP is transferred out of Federal ownership.

Subpart 2888—Trespass

■ 20. Amend § 2888.10 by revising paragraph (c) to read as follows:

§ 2888.10 What is trespass?

* * * * *

(c) The BLM will administer trespass actions for grants and TUPs as set forth in §§ 2808.10(c), and 2808.11 of this chapter.

* * * * *

PART 2920—LEASES, PERMITS, AND EASEMENTS

■ 21. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1740.

Subpart 2920—Leases, Permits, and Easements: General Provisions

■ 22. Amend § 2920.6(b) by revising the second sentence of paragraph (b) to read as follows:

§ 2920.6 Reimbursement of Costs.

* * * * *

(b) * * * The reimbursement of costs shall be in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

* * * * *

■ 23. Amend § 2920.8 by revising paragraph (b) to read as follows:

§ 2920.8 Fees.

* * * * *

(b) *Processing and monitoring fee.* Each request for renewal, transfer, or assignment of a lease or easement shall be accompanied by a non-refundable processing and monitoring fee determined in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

Note: The following adjusted 2002 NASS Census table of per acre land and building value and rent schedule zones is printed for information only and will not appear in Title 43 of the Code of Federal Regulations. The 2002 NASS Census per acre land and building value for each county has been reduced by 20 percent. Please see the discussion of section 2806.20 for further explanation. The 20 percent reduction represents the total value of all irrigated acres, plus acres in the ''other'' category (which includes buildings, roads, ponds, and wasteland) to total farm real-estate value. Counties will be re-assigned to the appropriate rent schedule zone in 2011 based upon the adjusted 2007 NASS Census per acre land and building value.

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE

State	County	80%—2002 L/B values	Rent schedule zone
Alabama	Autauga	$1,503	5
Alabama	Baldwin	2,002	6
Alabama	Barbour	958	3
Alabama	Bibb	1,370	4
Alabama	Blount	2,045	6
Alabama	Bullock	1,146	4
Alabama	Butler	1,238	4
Alabama	Calhoun	2,078	6
Alabama	Chambers	795	3
Alabama	Cherokee	1,234	4
Alabama	Chilton	1,437	4
Alabama	Choctaw	1,026	4
Alabama	Clarke	1,042	4
Alabama	Clay	1,112	4
Alabama	Cleburne	1,537	5
Alabama	Coffee	961	3
Alabama	Colbert	1,104	4
Alabama	Conecuh	887	3
Alabama	Coosa	1,080	4
Alabama	Covington	1,293	4
Alabama	Crenshaw	1,064	4
Alabama	Cullman	2,534	6
Alabama	Dale	1,138	4
Alabama	Dallas	938	3
Alabama	DeKalb	1,914	5
Alabama	Elmore	1,574	5
Alabama	Escambia	1,141	4
Alabama	Etowah	2,285	6
Alabama	Fayette	886	3
Alabama	Franklin	1,132	4
Alabama	Geneva	1,210	4
Alabama	Greene	882	3
Alabama	Hale	931	3
Alabama	Henry	959	3
Alabama	Houston	1,074	4
Alabama	Jackson	1,758	5
Alabama	Jefferson	2,086	6
Alabama	Lamar	929	3
Alabama	Lauderdale	1,446	4
Alabama	Lawrence	1,373	4
Alabama	Lee	1,824	5
Alabama	Limestone	1,770	5
Alabama	Lowndes	915	3
Alabama	Macon	1,052	4
Alabama	Madison	1,729	5
Alabama	Marengo	801	3

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Alabama	Marion	1,187	4
Alabama	Marshall	2,180	6
Alabama	Mobile	2,689	6
Alabama	Monroe	1,094	4
Alabama	Montgomery	1,558	5
Alabama	Morgan	2,250	6
Alabama	Perry	764	3
Alabama	Pickens	1,002	4
Alabama	Pike	1,138	4
Alabama	Randolph	1,518	5
Alabama	Russell	1,043	4
Alabama	Shelby	2,236	6
Alabama	St. Clair	1,891	5
Alabama	Sumter	814	3
Alabama	Talladega	2,054	6
Alabama	Tallapoosa	1,158	4
Alabama	Tuscaloosa	1,578	5
Alabama	Walker	1,385	4
Alabama	Washington	1,194	4
Alabama	Wilcox	810	3
Alabama	Winston	1,510	5
Alaska	Aleutian Islands Area	86	1
Alaska	Anchorage Area	1,839	5
Alaska	Fairbanks Area	524	3
Alaska	Juneau Area	35,743	11
Alaska	Kenai Peninsula	1,130	4
Arizona	Apache	116	1
Arizona	Cochise	505	3
Arizona	Coconino	129	1
Arizona	Gila	220	1
Arizona	Graham	384	2
Arizona	Greenlee	1,204	4
Arizona	La Paz	503	3
Arizona	Maricopa	2,421	6
Arizona	Mohave	348	2
Arizona	Navajo	143	1
Arizona	Pima	236	1
Arizona	Pinal	984	3
Arizona	Santa Cruz	1,147	4
Arizona	Yavapai	497	2
Arizona	Yuma	3,635	7
Arkansas	Arkansas	1,120	4
Arkansas	Ashley	1,091	4
Arkansas	Baxter	1,358	4
Arkansas	Benton	2,425	6
Arkansas	Boone	1,447	4
Arkansas	Bradley	1,518	5
Arkansas	Calhoun	1,022	4
Arkansas	Carroll	1,336	4
Arkansas	Chicot	937	3
Arkansas	Clark	1,145	4
Arkansas	Clay	1,301	4
Arkansas	Cleburne	1,378	4
Arkansas	Cleveland	1,756	5
Arkansas	Columbia	1,247	4
Arkansas	Conway	1,338	4
Arkansas	Craighead	1,376	4
Arkansas	Crawford	1,406	4
Arkansas	Crittenden	1,032	4
Arkansas	Cross	1,108	4
Arkansas	Dallas	1,043	4
Arkansas	Desha	882	3
Arkansas	Drew	1,004	4
Arkansas	Faulkner	1,458	4
Arkansas	Franklin	1,271	4
Arkansas	Fulton	815	3
Arkansas	Garland	1,808	5
Arkansas	Grant	1,373	4
Arkansas	Greene	1,245	4
Arkansas	Hempstead	1,117	4
Arkansas	Hot Spring	1,242	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Arkansas	Howard	1,318	4
Arkansas	Independence	994	3
Arkansas	Izard	922	3
Arkansas	Jackson	947	3
Arkansas	Jefferson	973	3
Arkansas	Johnson	1,787	5
Arkansas	Lafayette	854	3
Arkansas	Lawrence	1,020	4
Arkansas	Lee	826	3
Arkansas	Lincoln	917	3
Arkansas	Little River	897	3
Arkansas	Logan	1,218	4
Arkansas	Lonoke	1,111	4
Arkansas	Madison	1,097	4
Arkansas	Marion	1,050	4
Arkansas	Miller	836	3
Arkansas	Mississippi	1,081	4
Arkansas	Monroe	935	3
Arkansas	Montgomery	1,199	4
Arkansas	Nevada	860	3
Arkansas	Newton	1,196	4
Arkansas	Ouachita	1,142	4
Arkansas	Perry	1,418	4
Arkansas	Phillips	836	3
Arkansas	Pike	1,430	4
Arkansas	Poinsett	1,272	4
Arkansas	Polk	1,370	4
Arkansas	Pope	1,557	5
Arkansas	Prairie	996	3
Arkansas	Pulaski	1,414	4
Arkansas	Randolph	1,033	4
Arkansas	Saline	1,914	5
Arkansas	Scott	1,267	4
Arkansas	Searcy	795	3
Arkansas	Sebastian	1,717	5
Arkansas	Sevier	1,358	4
Arkansas	Sharp	818	3
Arkansas	St. Francis	974	3
Arkansas	Stone	810	3
Arkansas	Union	1,710	5
Arkansas	Van Buren	1,140	4
Arkansas	Washington	2,223	6
Arkansas	White	1,269	4
Arkansas	Woodruff	908	3
Arkansas	Yell	1,022	4
California	Alameda	2,230	6
California	Alpine	2,000	5
California	Amador	1,553	5
California	Butte	3,521	7
California	Calaveras	1,433	4
California	Colusa	2,109	6
California	Contra Costa	6,435	8
California	Del Norte	3,433	7
California	El Dorado	2,277	6
California	Fresno	2,890	6
California	Glenn	1,917	5
California	Humboldt	950	3
California	Imperial	2,381	6
California	Inyo	777	3
California	Kern	1,453	4
California	Kings	2,914	6
California	Lake	3,985	7
California	Lassen	555	3
California	Los Angeles	12,435	9
California	Madera	2,496	6
California	Marin	2,926	6
California	Mariposa	804	3
California	Mendocino	1,877	5
California	Merced	3,061	7
California	Modoc	554	3
California	Mono	1,249	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
California	Monterey	2,598	6
California	Napa	15,480	9
California	Nevada	2,734	6
California	Orange	8,529	8
California	Placer	3,879	7
California	Plumas	818	3
California	Riverside	3,864	7
California	Sacramento	3,588	7
California	San Benito	1,502	5
California	San Bernardino	1,715	5
California	San Diego	6,108	8
California	San Francisco	25,791	10
California	San Joaquin	5,338	8
California	San Luis Obispo	2,141	6
California	San Mateo	4,783	7
California	Santa Barbara	2,947	6
California	Santa Clara	2,310	6
California	Santa Cruz	7,468	8
California	Shasta	1,386	4
California	Sierra	1,210	4
California	Siskiyou	1,148	4
California	Solano	3,067	7
California	Sonoma	8,846	8
California	Stanislaus	4,854	7
California	Sutter	3,251	7
California	Tehama	1,326	4
California	Trinity	511	3
California	Tulare	3,159	7
California	Tuolumne	1,331	4
California	Ventura	7,071	8
California	Yolo	2,916	6
California	Yuba	2,755	6
Colorado	Adams	721	3
Colorado	Alamosa	965	3
Colorado	Arapahoe	682	3
Colorado	Archuleta	1,022	4
Colorado	Baca	234	1
Colorado	Bent	256	2
Colorado	Boulder	6,111	8
Colorado	Broomfield*	605	3
Colorado	Chaffee	1,674	5
Colorado	Cheyenne	259	2
Colorado	Clear Creek	1,332	4
Colorado	Conejos	670	3
Colorado	Costilla	401	2
Colorado	Crowley	226	1
Colorado	Custer	1,242	4
Colorado	Delta	1,674	5
Colorado	Denver*	605	3
Colorado	Dolores	757	3
Colorado	Douglas	2,452	6
Colorado	Eagle	1,207	4
Colorado	El Paso	704	3
Colorado	Elbert	555	3
Colorado	Fremont	835	3
Colorado	Garfield	1,034	4
Colorado	Gilpin	2,230	6
Colorado	Grand	965	3
Colorado	Gunnison	1,482	4
Colorado	Hinsdale	2,341	6
Colorado	Huerfano	343	2
Colorado	Jackson	416	2
Colorado	Jefferson	3,917	7
Colorado	Kiowa	246	1
Colorado	Kit Carson	371	2
Colorado	La Plata	816	3
Colorado	Lake	1,105	4
Colorado	Larimer	1,849	5
Colorado	Las Animas	194	1
Colorado	Lincoln	201	1
Colorado	Logan	448	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Colorado	Mesa	1,141	4
Colorado	Mineral	1,250	4
Colorado	Moffat	333	2
Colorado	Montezuma	413	2
Colorado	Montrose	944	3
Colorado	Morgan	641	3
Colorado	Otero	306	2
Colorado	Ouray	1,204	4
Colorado	Park	627	3
Colorado	Phillips	574	3
Colorado	Pitkin	4,741	7
Colorado	Prowers	334	2
Colorado	Pueblo	393	2
Colorado	Rio Blanco	535	3
Colorado	Rio Grande	1,462	4
Colorado	Routt	1,512	5
Colorado	Saguache	567	3
Colorado	San Juan*	605	3
Colorado	San Miguel	770	3
Colorado	Sedgwick	588	3
Colorado	Summit	1,413	4
Colorado	Teller	1,027	4
Colorado	Washington	334	2
Colorado	Weld	1,103	4
Colorado	Yuma	458	2
Connecticut	Fairfield	20,931	10
Connecticut	Litchfield	6,889	8
Connecticut	Middlesex	9,966	8
Connecticut	New Haven	10,904	9
Connecticut	New London	5,511	8
Connecticut	Tolland	4,532	7
Connecticut	Windham	5,262	8
Delaware	Kent	2,798	6
Delaware	New Castle	4,545	7
Delaware	Sussex	3,161	7
Florida	Alachua	2,578	6
Florida	Baker	3,163	7
Florida	Bay	2,101	6
Florida	Bradford	1,988	5
Florida	Brevard	1,908	5
Florida	Broward	16,338	9
Florida	Calhoun	1,277	4
Florida	Charlotte	1,381	4
Florida	Citrus	1,998	5
Florida	Clay	1,986	5
Florida	Collier	2,128	6
Florida	Columbia	1,212	4
Florida	Dade	7,781	8
Florida	DeSoto	1,932	5
Florida	Dixie	1,442	4
Florida	Duval	4,849	7
Florida	Escambia	1,906	5
Florida	Flagler	1,307	4
Florida	Franklin	932	3
Florida	Gadsden	1,937	5
Florida	Gilchrist	1,858	5
Florida	Glades	1,479	4
Florida	Gulf	1,509	5
Florida	Hamilton	1,135	4
Florida	Hardee	1,873	5
Florida	Hendry	3,077	7
Florida	Hernando	4,074	7
Florida	Highlands	1,805	5
Florida	Hillsborough	4,328	7
Florida	Holmes	1,288	4
Florida	Indian River	2,375	6
Florida	Jackson	1,182	4
Florida	Jefferson	1,480	4
Florida	Lafayette	1,074	4
Florida	Lake	3,432	7
Florida	Lee	2,634	6

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Florida	Leon	1,668	5
Florida	Levy	1,519	5
Florida	Liberty	1,093	4
Florida	Madison	1,229	4
Florida	Manatee	2,514	6
Florida	Marion	3,994	7
Florida	Martin	2,083	6
Florida	Monroe	16,556	9
Florida	Nassau	3,818	7
Florida	Okaloosa	2,031	6
Florida	Okeechobee	1,630	5
Florida	Orange	3,145	7
Florida	Osceola	1,352	4
Florida	Palm Beach	2,678	6
Florida	Pasco	3,090	7
Florida	Pinellas	25,386	10
Florida	Polk	2,319	6
Florida	Putnam	1,984	5
Florida	Santa Rosa	2,119	6
Florida	Sarasota	2,396	6
Florida	Seminole	4,910	7
Florida	St. Johns	3,452	7
Florida	St. Lucie	2,591	6
Florida	Sumter	1,924	5
Florida	Suwannee	2,002	6
Florida	Taylor	1,034	4
Florida	Union	1,054	4
Florida	Volusia	3,486	7
Florida	Wakulla	2,313	6
Florida	Walton	1,511	5
Florida	Washington	1,830	5
Georgia	Appling	1,253	4
Georgia	Atkinson	1,135	4
Georgia	Bacon	1,744	5
Georgia	Baker	1,401	4
Georgia	Baldwin	1,875	5
Georgia	Banks	4,026	7
Georgia	Barrow	4,628	7
Georgia	Bartow	2,331	6
Georgia	Ben Hill	1,146	4
Georgia	Berrien	1,344	4
Georgia	Bibb	1,883	5
Georgia	Bleckley	1,318	4
Georgia	Brantley	1,282	4
Georgia	Brooks	1,282	4
Georgia	Bryan	1,350	4
Georgia	Bulloch	1,303	4
Georgia	Burke	1,075	4
Georgia	Butts	1,629	5
Georgia	Calhoun	1,038	4
Georgia	Camden	1,292	4
Georgia	Candler	1,083	4
Georgia	Carroll	3,118	7
Georgia	Catoosa	3,102	7
Georgia	Charlton	1,546	5
Georgia	Chatham	1,650	5
Georgia	Chattahoochee	1,181	4
Georgia	Chattooga	1,359	4
Georgia	Cherokee	6,686	8
Georgia	Clarke	3,274	7
Georgia	Clay	822	3
Georgia	Clayton	4,351	7
Georgia	Clinch	1,354	4
Georgia	Cobb	7,290	8
Georgia	Coffee	1,267	4
Georgia	Colquitt	1,266	4
Georgia	Columbia	3,238	7
Georgia	Cook	1,491	4
Georgia	Coweta	4,432	7
Georgia	Crawford	1,594	5
Georgia	Crisp	1,396	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Georgia	Dade	1,649	5
Georgia	Dawson	3,659	7
Georgia	Decatur	1,322	4
Georgia	DeKalb	5,182	8
Georgia	Dodge	821	3
Georgia	Dooly	1,043	4
Georgia	Dougherty	1,063	4
Georgia	Douglas	4,642	7
Georgia	Early	1,055	4
Georgia	Echols	1,282	4
Georgia	Effingham	1,392	4
Georgia	Elbert	1,714	5
Georgia	Emanuel	980	3
Georgia	Evans	1,324	4
Georgia	Fannin	2,839	6
Georgia	Fayette	4,005	7
Georgia	Floyd	2,120	6
Georgia	Forsyth	5,986	8
Georgia	Franklin	3,646	7
Georgia	Fulton	4,645	7
Georgia	Gilmer	3,672	7
Georgia	Glascock	1,250	4
Georgia	Glynn	1,443	4
Georgia	Gordon	3,117	7
Georgia	Grady	1,459	4
Georgia	Greene	2,326	6
Georgia	Gwinnett	5,179	8
Georgia	Habersham	4,229	7
Georgia	Hall	4,307	7
Georgia	Hancock	942	3
Georgia	Haralson	2,262	6
Georgia	Harris	1,510	5
Georgia	Hart	2,715	6
Georgia	Heard	1,740	5
Georgia	Henry	3,381	7
Georgia	Houston	1,758	5
Georgia	Irwin	1,134	4
Georgia	Jackson	4,452	7
Georgia	Jasper	1,799	5
Georgia	Jeff Davis	1,207	4
Georgia	Jefferson	1,058	4
Georgia	Jenkins	1,070	4
Georgia	Johnson	1,270	4
Georgia	Jones	1,688	5
Georgia	Lamar	1,960	5
Georgia	Lanier	945	3
Georgia	Laurens	1,087	4
Georgia	Lee	1,235	4
Georgia	Liberty	1,860	5
Georgia	Lincoln	2,126	6
Georgia	Long	1,163	4
Georgia	Lowndes	1,637	5
Georgia	Lumpkin	4,877	7
Georgia	Macon	1,350	4
Georgia	Madison	3,704	7
Georgia	Marion	1,231	4
Georgia	McDuffie	1,593	5
Georgia	McIntosh	1,294	4
Georgia	Meriwether	1,598	5
Georgia	Miller	1,310	4
Georgia	Monroe	1,735	5
Georgia	Montgomery	1,120	4
Georgia	Morgan	2,814	6
Georgia	Murray	2,422	6
Georgia	Muscogee	2,580	6
Georgia	Newton	3,293	7
Georgia	Oconee	3,876	7
Georgia	Oglethorpe	2,662	6
Georgia	Paulding	5,219	8
Georgia	Peach	1,900	5
Georgia	Pickens	4,625	7

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Georgia	Pierce	1,230	4
Georgia	Pike	3,001	6
Georgia	Polk	1,918	5
Georgia	Pulaski	1,121	4
Georgia	Putnam	2,178	6
Georgia	Quitman	1,090	4
Georgia	Rabun	4,870	7
Georgia	Randolph	963	3
Georgia	Richmond	2,334	6
Georgia	Rockdale	4,574	7
Georgia	Schley	1,269	4
Georgia	Screven	1,084	4
Georgia	Seminole	1,238	4
Georgia	Spalding	3,675	7
Georgia	Stephens	3,558	7
Georgia	Stewart	1,125	4
Georgia	Sumter	1,137	4
Georgia	Talbot	1,364	4
Georgia	Taliaferro	1,333	4
Georgia	Tattnall	1,590	5
Georgia	Taylor	1,289	4
Georgia	Telfair	1,249	4
Georgia	Terrell	1,085	4
Georgia	Thomas	1,238	4
Georgia	Tift	1,628	5
Georgia	Toombs	1,222	4
Georgia	Towns	3,102	7
Georgia	Treutlen	1,097	4
Georgia	Troup	1,300	4
Georgia	Turner	1,295	4
Georgia	Twiggs	1,161	4
Georgia	Union	4,348	7
Georgia	Upson	1,788	5
Georgia	Walker	2,043	6
Georgia	Walton	5,206	8
Georgia	Ware	1,218	4
Georgia	Warren	1,082	4
Georgia	Washington	1,230	4
Georgia	Wayne	1,435	4
Georgia	Webster	1,144	4
Georgia	Wheeler	971	3
Georgia	White	4,816	7
Georgia	Whitfield	1,968	5
Georgia	Wilcox	1,050	4
Georgia	Wilkes	1,394	4
Georgia	Wilkinson	1,106	4
Georgia	Worth	1,246	4
Hawaii	Hawaii	2,258	6
Hawaii	Honolulu	6,686	8
Hawaii	Kauai	3,191	7
Hawaii	Maui	3,290	7
Idaho	Ada	2,777	6
Idaho	Adams	454	2
Idaho	Bannock	585	3
Idaho	Bear Lake	632	3
Idaho	Benewah	970	3
Idaho	Bingham	921	3
Idaho	Blaine	1,043	4
Idaho	Boise	808	3
Idaho	Bonner	2,327	6
Idaho	Bonneville	1,042	4
Idaho	Boundary	1,913	5
Idaho	Butte	703	3
Idaho	Camas	558	3
Idaho	Canyon	3,375	7
Idaho	Caribou	541	3
Idaho	Cassia	789	3
Idaho	Clark	518	3
Idaho	Clearwater	1,028	4
Idaho	Custer	1,469	4
Idaho	Elmore	575	3

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Idaho	Franklin	862	3
Idaho	Fremont	918	3
Idaho	Gem	987	3
Idaho	Gooding	2,028	6
Idaho	Idaho	596	3
Idaho	Jefferson	1,406	4
Idaho	Jerome	1,510	5
Idaho	Kootenai	1,812	5
Idaho	Latah	1,120	4
Idaho	Lemhi	982	3
Idaho	Lewis	664	3
Idaho	Lincoln	754	3
Idaho	Madison	1,826	5
Idaho	Minidoka	1,600	5
Idaho	Nez Perce	682	3
Idaho	Oneida	534	3
Idaho	Owyhee	551	3
Idaho	Payette	1,388	4
Idaho	Power	789	3
Idaho	Shoshone	2,754	6
Idaho	Teton	1,970	5
Idaho	Twin Falls	1,557	5
Idaho	Valley	1,219	4
Idaho	Washington	589	3
Illinois	Adams	1,624	5
Illinois	Alexander	1,044	4
Illinois	Bond	1,682	5
Illinois	Boone	2,739	6
Illinois	Brown	1,330	4
Illinois	Bureau	2,124	6
Illinois	Calhoun	1,246	4
Illinois	Carroll	1,902	5
Illinois	Cass	1,682	5
Illinois	Champaign	2,312	6
Illinois	Christian	2,024	6
Illinois	Clark	1,560	5
Illinois	Clay	1,268	4
Illinois	Clinton	1,973	5
Illinois	Coles	2,173	6
Illinois	Cook	5,029	8
Illinois	Crawford	1,370	4
Illinois	Cumberland	1,698	5
Illinois	De Witt	2,410	6
Illinois	DeKalb	3,007	7
Illinois	Douglas	2,376	6
Illinois	DuPage	4,045	7
Illinois	Edgar	1,873	5
Illinois	Edwards	1,273	4
Illinois	Effingham	1,736	5
Illinois	Fayette	1,371	4
Illinois	Ford	2,086	6
Illinois	Franklin	1,258	4
Illinois	Fulton	1,509	5
Illinois	Gallatin	1,198	4
Illinois	Greene	1,484	4
Illinois	Grundy	2,477	6
Illinois	Hamilton	1,298	4
Illinois	Hancock	2,035	6
Illinois	Hardin	1,389	4
Illinois	Henderson	1,802	5
Illinois	Henry	1,966	5
Illinois	Iroquois	1,922	5
Illinois	Jackson	1,338	4
Illinois	Jasper	1,606	5
Illinois	Jefferson	1,066	4
Illinois	Jersey	1,722	5
Illinois	Jo Daviess	1,752	5
Illinois	Johnson	1,090	4
Illinois	Kane	3,086	7
Illinois	Kankakee	2,250	6
Illinois	Kendall	3,365	7

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Illinois	Knox	1,904	5
Illinois	La Salle	2,485	6
Illinois	Lake	3,724	7
Illinois	Lawrence	1,413	4
Illinois	Lee	2,398	6
Illinois	Livingston	2,126	6
Illinois	Logan	2,246	6
Illinois	Macon	2,446	6
Illinois	Macoupin	1,890	5
Illinois	Madison	1,982	5
Illinois	Marion	1,286	4
Illinois	Marshall	2,163	6
Illinois	Mason	1,746	5
Illinois	Massac	1,001	3
Illinois	McDonough	1,798	5
Illinois	McHenry	3,410	7
Illinois	McLean	2,330	6
Illinois	Menard	1,937	5
Illinois	Mercer	1,773	5
Illinois	Monroe	2,034	6
Illinois	Montgomery	1,626	5
Illinois	Morgan	1,920	5
Illinois	Moultrie	2,362	6
Illinois	Ogle	2,505	6
Illinois	Peoria	2,203	6
Illinois	Perry	1,138	4
Illinois	Piatt	2,385	6
Illinois	Pike	1,472	4
Illinois	Pope	924	3
Illinois	Pulaski	1,134	4
Illinois	Putnam	2,310	6
Illinois	Randolph	1,551	5
Illinois	Richland	1,435	4
Illinois	Rock Island	2,114	6
Illinois	Saline	1,230	4
Illinois	Sangamon	2,263	6
Illinois	Schuyler	1,279	4
Illinois	Scott	1,642	5
Illinois	Shelby	1,873	5
Illinois	St. Clair	2,207	6
Illinois	Stark	2,105	6
Illinois	Stephenson	1,910	5
Illinois	Tazewell	2,290	6
Illinois	Union	1,555	5
Illinois	Vermilion	1,974	5
Illinois	Wabash	1,378	4
Illinois	Warren	2,014	6
Illinois	Washington	1,520	5
Illinois	Wayne	991	3
Illinois	White	1,287	4
Illinois	Whiteside	2,032	6
Illinois	Will	3,722	7
Illinois	Williamson	1,609	5
Illinois	Winnebago	2,365	6
Illinois	Woodford	2,394	6
Indiana	Adams	2,304	6
Indiana	Allen	2,679	6
Indiana	Bartholomew	2,366	6
Indiana	Benton	1,995	5
Indiana	Blackford	1,760	5
Indiana	Boone	2,555	6
Indiana	Brown	2,213	6
Indiana	Carroll	2,186	6
Indiana	Cass	1,911	5
Indiana	Clark	2,621	6
Indiana	Clay	1,621	5
Indiana	Clinton	2,182	6
Indiana	Crawford	1,460	4
Indiana	Daviess	1,620	5
Indiana	Dearborn	2,594	6
Indiana	Decatur	2,113	6

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Indiana	DeKalb	1,762	5
Indiana	Delaware	2,032	6
Indiana	Dubois	1,853	5
Indiana	Elkhart	3,042	7
Indiana	Fayette	1,834	5
Indiana	Floyd	2,933	6
Indiana	Fountain	1,774	5
Indiana	Franklin	1,993	5
Indiana	Fulton	1,636	5
Indiana	Gibson	1,824	5
Indiana	Grant	2,026	6
Indiana	Greene	1,600	5
Indiana	Hamilton	3,250	7
Indiana	Hancock	2,576	6
Indiana	Harrison	2,054	6
Indiana	Hendricks	2,722	6
Indiana	Henry	2,190	6
Indiana	Howard	2,451	6
Indiana	Huntington	1,994	5
Indiana	Jackson	1,954	5
Indiana	Jasper	1,949	5
Indiana	Jay	2,042	6
Indiana	Jefferson	1,918	5
Indiana	Jennings	1,743	5
Indiana	Johnson	3,021	7
Indiana	Knox	1,725	5
Indiana	Kosciusko	2,176	6
Indiana	LaGrange	2,835	6
Indiana	Lake	2,714	6
Indiana	LaPorte	2,122	6
Indiana	Lawrence	1,260	4
Indiana	Madison	2,253	6
Indiana	Marion	3,530	7
Indiana	Marshall	1,886	5
Indiana	Martin	1,550	5
Indiana	Miami	1,925	5
Indiana	Monroe	1,955	5
Indiana	Montgomery	1,939	5
Indiana	Morgan	2,529	6
Indiana	Newton	1,914	5
Indiana	Noble	2,194	6
Indiana	Ohio	2,610	6
Indiana	Orange	1,521	5
Indiana	Owen	1,625	5
Indiana	Parke	1,641	5
Indiana	Perry	1,447	4
Indiana	Pike	1,641	5
Indiana	Porter	2,520	6
Indiana	Posey	1,790	5
Indiana	Pulaski	1,857	5
Indiana	Putnam	1,941	5
Indiana	Randolph	1,698	5
Indiana	Ripley	2,014	6
Indiana	Rush	2,099	6
Indiana	Scott	1,778	5
Indiana	Shelby	2,241	6
Indiana	Spencer	1,553	5
Indiana	St. Joseph	2,331	6
Indiana	Starke	1,636	5
Indiana	Steuben	1,834	5
Indiana	Sullivan	1,580	5
Indiana	Switzerland	1,951	5
Indiana	Tippecanoe	2,291	6
Indiana	Tipton	2,612	6
Indiana	Union	1,980	5
Indiana	Vanderburgh	2,050	6
Indiana	Vermillion	1,833	5
Indiana	Vigo	1,732	5
Indiana	Wabash	2,032	6
Indiana	Warren	1,956	5
Indiana	Warrick	1,919	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Indiana	Washington	1,790	5
Indiana	Wayne	1,779	5
Indiana	Wells	1,885	5
Indiana	White	2,028	6
Indiana	Whitley	2,012	6
Iowa	Adair	1,171	4
Iowa	Adams	1,137	4
Iowa	Allamakee	1,219	4
Iowa	Appanoose	741	3
Iowa	Audubon	1,472	4
Iowa	Benton	1,899	5
Iowa	Black Hawk	2,229	6
Iowa	Boone	1,721	5
Iowa	Bremer	2,070	6
Iowa	Buchanan	1,959	5
Iowa	Buena Vista	1,972	5
Iowa	Butler	1,786	5
Iowa	Calhoun	1,968	5
Iowa	Carroll	1,768	5
Iowa	Cass	1,311	4
Iowa	Cedar	1,665	5
Iowa	Cerro Gordo	1,691	5
Iowa	Cherokee	1,819	5
Iowa	Chickasaw	1,735	5
Iowa	Clarke	796	3
Iowa	Clay	1,802	5
Iowa	Clayton	1,522	5
Iowa	Clinton	1,847	5
Iowa	Crawford	1,522	5
Iowa	Dallas	2,030	6
Iowa	Davis	909	3
Iowa	Decatur	756	3
Iowa	Delaware	1,900	5
Iowa	Des Moines	1,773	5
Iowa	Dickinson	1,549	5
Iowa	Dubuque	1,707	5
Iowa	Emmet	1,525	5
Iowa	Fayette	1,728	5
Iowa	Floyd	1,822	5
Iowa	Franklin	1,723	5
Iowa	Fremont	1,288	4
Iowa	Greene	1,674	5
Iowa	Grundy	2,061	6
Iowa	Guthrie	1,450	4
Iowa	Hamilton	1,859	5
Iowa	Hancock	1,676	5
Iowa	Hardin	1,970	5
Iowa	Harrison	1,354	4
Iowa	Henry	1,615	5
Iowa	Howard	1,594	5
Iowa	Humboldt	1,990	5
Iowa	Ida	1,647	5
Iowa	Iowa	1,365	4
Iowa	Jackson	1,479	4
Iowa	Jasper	1,632	5
Iowa	Jefferson	1,194	4
Iowa	Johnson	1,902	5
Iowa	Jones	1,762	5
Iowa	Keokuk	1,215	4
Iowa	Kossuth	1,870	5
Iowa	Lee	1,422	4
Iowa	Linn	2,062	6
Iowa	Louisa	1,720	5
Iowa	Lucas	874	3
Iowa	Lyon	1,885	5
Iowa	Madison	1,406	4
Iowa	Mahaska	1,482	4
Iowa	Marion	1,193	4
Iowa	Marshall	1,607	5
Iowa	Mills	1,442	4
Iowa	Mitchell	1,778	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Iowa	Monona	1,434	4
Iowa	Monroe	806	3
Iowa	Montgomery	1,136	4
Iowa	Muscatine	1,826	5
Iowa	O'Brien	2,036	6
Iowa	Osceola	1,980	5
Iowa	Page	1,005	4
Iowa	Palo Alto	1,885	5
Iowa	Plymouth	1,814	5
Iowa	Pocahontas	1,902	5
Iowa	Polk	1,725	5
Iowa	Pottawattamie	1,622	5
Iowa	Poweshiek	1,466	4
Iowa	Ringgold	812	3
Iowa	Sac	1,950	5
Iowa	Scott	2,402	6
Iowa	Shelby	1,635	5
Iowa	Sioux	2,124	6
Iowa	Story	1,874	5
Iowa	Tama	1,802	5
Iowa	Taylor	981	3
Iowa	Union	1,047	4
Iowa	Van Buren	976	3
Iowa	Wapello	1,232	4
Iowa	Warren	1,174	4
Iowa	Washington	1,817	5
Iowa	Wayne	801	3
Iowa	Webster	1,765	5
Iowa	Winnebago	1,681	5
Iowa	Winneshiek	1,446	4
Iowa	Woodbury	1,435	4
Iowa	Worth	1,722	5
Iowa	Wright	1,983	5
Kansas	Allen	657	3
Kansas	Anderson	719	3
Kansas	Atchison	846	3
Kansas	Barber	353	2
Kansas	Barton	473	2
Kansas	Bourbon	576	3
Kansas	Brown	931	3
Kansas	Butler	802	3
Kansas	Chase	494	2
Kansas	Chautauqua	428	2
Kansas	Cherokee	774	3
Kansas	Cheyenne	384	2
Kansas	Clark	316	2
Kansas	Clay	726	3
Kansas	Cloud	483	2
Kansas	Coffey	604	3
Kansas	Comanche	326	2
Kansas	Cowley	620	3
Kansas	Crawford	700	3
Kansas	Decatur	388	2
Kansas	Dickinson	533	3
Kansas	Doniphan	1,025	4
Kansas	Douglas	1,608	5
Kansas	Edwards	463	2
Kansas	Elk	397	2
Kansas	Ellis	422	2
Kansas	Ellsworth	414	2
Kansas	Finney	493	2
Kansas	Ford	462	2
Kansas	Franklin	992	3
Kansas	Geary	687	3
Kansas	Gove	359	2
Kansas	Graham	362	2
Kansas	Grant	531	3
Kansas	Gray	633	3
Kansas	Greeley	403	2
Kansas	Greenwood	442	2
Kansas	Hamilton	372	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Kansas	Harper	498	2
Kansas	Harvey	742	3
Kansas	Haskell	595	3
Kansas	Hodgeman	410	2
Kansas	Jackson	666	3
Kansas	Jefferson	854	3
Kansas	Jewell	525	3
Kansas	Johnson	1,582	5
Kansas	Kearny	383	2
Kansas	Kingman	546	3
Kansas	Kiowe	353	2
Kansas	Labette	597	3
Kansas	Lane	374	2
Kansas	Leavenworth	1,271	4
Kansas	Lincoln	351	2
Kansas	Linn	802	3
Kansas	Logan	334	2
Kansas	Lyon	622	3
Kansas	Marion	585	3
Kansas	Marshall	734	3
Kansas	McPherson	921	3
Kansas	Meade	467	2
Kansas	Miami	1,404	4
Kansas	Mitchell	579	3
Kansas	Montgomery	707	3
Kansas	Morris	506	3
Kansas	Morton	373	2
Kansas	Nemaha	798	3
Kansas	Neosho	610	3
Kansas	Ness	330	2
Kansas	Norton	358	2
Kansas	Osage	719	3
Kansas	Osborne	398	2
Kansas	Ottawa	462	2
Kansas	Pawnee	450	2
Kansas	Phillips	369	2
Kansas	Pottawatomie	578	3
Kansas	Pratt	506	3
Kansas	Rawlins	333	2
Kansas	Reno	700	3
Kansas	Republic	655	3
Kansas	Rice	534	3
Kansas	Riley	828	3
Kansas	Rooks	358	2
Kansas	Rush	378	2
Kansas	Russell	344	2
Kansas	Saline	598	3
Kansas	Scott	444	2
Kansas	Sedgwick	958	3
Kansas	Seward	518	3
Kansas	Shawnee	1,012	4
Kansas	Sheridan	477	2
Kansas	Sherman	498	2
Kansas	Smith	530	3
Kansas	Stafford	611	3
Kansas	Stanton	458	2
Kansas	Stevens	542	3
Kansas	Sumner	546	3
Kansas	Thomas	486	2
Kansas	Trego	370	2
Kansas	Wabaunsee	581	3
Kansas	Wallace	355	2
Kansas	Washington	643	3
Kansas	Wichita	402	2
Kansas	Wilson	616	3
Kansas	Woodson	471	2
Kansas	Wyandotte	3,132	7
Kentucky	Adair	1,427	4
Kentucky	Allen	1,431	4
Kentucky	Anderson	1,926	5
Kentucky	Ballard	1,356	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Kentucky	Barren	1,287	4
Kentucky	Bath	1,098	4
Kentucky	Bell	1,061	4
Kentucky	Boone	2,906	6
Kentucky	Bourbon	2,131	6
Kentucky	Boyd	1,157	4
Kentucky	Boyle	1,709	5
Kentucky	Bracken	1,227	4
Kentucky	Breathitt	738	3
Kentucky	Breckinridge	1,206	4
Kentucky	Bullitt	2,194	6
Kentucky	Butler	1,230	4
Kentucky	Caldwell	925	3
Kentucky	Calloway	1,490	4
Kentucky	Campbell	3,069	7
Kentucky	Carlisle	1,128	4
Kentucky	Carroll	1,657	5
Kentucky	Carter	1,197	4
Kentucky	Casey	934	3
Kentucky	Christian	1,357	4
Kentucky	Clark	1,746	5
Kentucky	Clay	767	3
Kentucky	Clinton	1,223	4
Kentucky	Crittenden	834	3
Kentucky	Cumberland	830	3
Kentucky	Daviess	1,633	5
Kentucky	Edmonson	941	3
Kentucky	Elliott	725	3
Kentucky	Estill	890	3
Kentucky	Fayette	3,671	7
Kentucky	Fleming	1,018	4
Kentucky	Floyd	1,229	4
Kentucky	Franklin	1,880	5
Kentucky	Fulton	1,160	4
Kentucky	Gallatin	1,724	5
Kentucky	Garrard	1,482	4
Kentucky	Grant	2,036	6
Kentucky	Graves	1,327	4
Kentucky	Grayson	1,102	4
Kentucky	Green	1,218	4
Kentucky	Greenup	963	3
Kentucky	Hancock	1,066	4
Kentucky	Hardin	1,516	5
Kentucky	Harlan	1,799	5
Kentucky	Harrison	1,494	4
Kentucky	Hart	1,110	4
Kentucky	Henderson	1,546	5
Kentucky	Henry	1,918	5
Kentucky	Hickman	1,198	4
Kentucky	Hopkins	1,041	4
Kentucky	Jackson	955	3
Kentucky	Jefferson	3,934	7
Kentucky	Jessamine	2,959	6
Kentucky	Johnson	1,218	4
Kentucky	Kenton	3,020	7
Kentucky	Knott	1,279	4
Kentucky	Knox	1,236	4
Kentucky	Larue	1,549	5
Kentucky	Laurel	1,844	5
Kentucky	Lawrence	728	3
Kentucky	Lee	911	3
Kentucky	Leslie	629	3
Kentucky	Letcher	830	3
Kentucky	Lewis	715	3
Kentucky	Lincoln	1,396	4
Kentucky	Livingston	819	3
Kentucky	Logan	1,274	4
Kentucky	Lyon	950	3
Kentucky	Madison	1,813	5
Kentucky	Magoffin	896	3
Kentucky	Marion	1,417	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Kentucky	Marshall	1,406	4
Kentucky	Martin	488	2
Kentucky	Mason	1,511	5
Kentucky	McCracken	1,402	4
Kentucky	McCreary	1,797	5
Kentucky	McLean	1,357	4
Kentucky	Meade	1,654	5
Kentucky	Menifee	1,554	5
Kentucky	Mercer	2,282	6
Kentucky	Metcalfe	1,275	4
Kentucky	Monroe	1,050	4
Kentucky	Montgomery	1,530	5
Kentucky	Morgan	775	3
Kentucky	Muhlenberg	1,009	4
Kentucky	Nelson	1,723	5
Kentucky	Nicholas	1,008	4
Kentucky	Ohio	1,373	4
Kentucky	Oldham	3,650	7
Kentucky	Owen	1,331	4
Kentucky	Owsley	1,055	4
Kentucky	Pendleton	1,183	4
Kentucky	Perry	910	3
Kentucky	Pike	891	3
Kentucky	Powell	1,450	4
Kentucky	Pulaski	1,497	4
Kentucky	Robertson	858	3
Kentucky	Rockcastle	1,390	4
Kentucky	Rowan	1,064	4
Kentucky	Russell	1,562	5
Kentucky	Scott	2,517	6
Kentucky	Shelby	2,577	6
Kentucky	Simpson	1,617	5
Kentucky	Spencer	2,032	6
Kentucky	Taylor	1,351	4
Kentucky	Todd	1,387	4
Kentucky	Trigg	1,181	4
Kentucky	Trimble	1,208	4
Kentucky	Union	1,384	4
Kentucky	Warren	1,643	5
Kentucky	Washington	1,421	4
Kentucky	Wayne	1,773	5
Kentucky	Webster	1,128	4
Kentucky	Whitley	1,224	4
Kentucky	Wolfe	889	3
Kentucky	Woodford	3,004	7
Louisiana	Acadia	1,418	4
Louisiana	Allen	983	3
Louisiana	Ascension	2,223	6
Louisiana	Assumption	1,278	4
Louisiana	Avoyelles	1,040	4
Louisiana	Beauregard	1,071	4
Louisiana	Bienville	1,223	4
Louisiana	Bossier	1,334	4
Louisiana	Caddo	1,142	4
Louisiana	Calcasieu	1,140	4
Louisiana	Caldwell	1,080	4
Louisiana	Cameron	1,150	4
Louisiana	Catahoula	931	3
Louisiana	Claiborne	1,269	4
Louisiana	Concordia	902	3
Louisiana	De Soto	1,022	4
Louisiana	East Baton Rouge	2,459	6
Louisiana	East Carroll	955	3
Louisiana	East Feliciana	1,542	5
Louisiana	Evangeline	1,009	4
Louisiana	Franklin	953	3
Louisiana	Grant	1,066	4
Louisiana	Iberia	1,506	5
Louisiana	Iberville	1,482	4
Louisiana	Jackson	2,102	6
Louisiana	Jefferson	1,763	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Louisiana	Jefferson Davis	871	3
Louisiana	La Salle	1,350	4
Louisiana	Lafayette	2,529	6
Louisiana	Lafourche	1,176	4
Louisiana	Lincoln	1,562	5
Louisiana	Livingston	2,333	6
Louisiana	Madison	884	3
Louisiana	Morehouse	938	3
Louisiana	Natchitoches	1,090	4
Louisiana	Orleans	35,002	11
Louisiana	Ouachita	1,394	4
Louisiana	Plaquemines	2,311	6
Louisiana	Pointe Coupee	1,138	4
Louisiana	Rapides	1,363	4
Louisiana	Red River	716	3
Louisiana	Richland	836	3
Louisiana	Sabine	1,515	5
Louisiana	St. Bernard	3,397	7
Louisiana	St. Charles	3,322	7
Louisiana	St. Helena	1,586	5
Louisiana	St. James	1,040	4
Louisiana	St. John the Baptist	2,728	6
Louisiana	St. Landry	1,107	4
Louisiana	St. Martin	1,333	4
Louisiana	St. Mary	1,182	4
Louisiana	St. Tammany	3,126	7
Louisiana	Tangipahoa	2,224	6
Louisiana	Tensas	844	3
Louisiana	Terrebonne	1,458	4
Louisiana	Union	1,579	5
Louisiana	Vermilion	1,306	4
Louisiana	Vernon	1,450	4
Louisiana	Washington	1,761	5
Louisiana	Webster	2,310	6
Louisiana	West Baton Rouge	1,572	5
Louisiana	West Carroll	1,425	4
Louisiana	West Feliciana	1,454	4
Louisiana	Winn	1,267	4
Maine	Androscoggin	1,937	5
Maine	Aroostook	718	3
Maine	Cumberland	3,234	7
Maine	Franklin	1,167	4
Maine	Hancock	1,568	5
Maine	Kennebec	1,539	5
Maine	Knox	2,266	6
Maine	Lincoln	2,195	6
Maine	Oxford	1,918	5
Maine	Penobscot	1,013	4
Maine	Piscataquis	812	3
Maine	Sagadahoc	2,298	6
Maine	Somerset	1,044	4
Maine	Waldo	1,334	4
Maine	Washington	685	3
Maine	York	3,009	7
Maryland	Allegany	1,958	5
Maryland	Anne Arundel	5,980	8
Maryland	Baltimore	5,459	8
Maryland	Calvert	3,184	7
Maryland	Caroline	2,361	6
Maryland	Carroll	4,503	7
Maryland	Cecil	4,639	7
Maryland	Charles	2,674	6
Maryland	Dorchester	2,163	6
Maryland	Frederick	4,260	7
Maryland	Garrett	1,743	5
Maryland	Harford	3,922	7
Maryland	Howard	4,857	7
Maryland	Kent	2,704	6
Maryland	Montgomery	4,783	7
Maryland	Prince George's	5,225	8
Maryland	Queen Anne's	2,515	6

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Maryland	Somerset	2,013	6
Maryland	St. Mary's	2,265	6
Maryland	Talbot	3,362	7
Maryland	Washington	3,043	7
Maryland	Wicomico	2,730	6
Maryland	Worcester	1,915	5
Massachusetts	Barnstable	17,137	9
Massachusetts	Berkshire	4,511	7
Massachusetts	Bristol	10,200	9
Massachusetts	Dukes	9,074	8
Massachusetts	Essex	11,648	9
Massachusetts	Franklin	3,191	7
Massachusetts	Hampden	5,123	8
Massachusetts	Hampshire	5,281	8
Massachusetts	Middlesex	16,780	9
Massachusetts	Nantucket	40,659	11
Massachusetts	Norfolk	12,768	9
Massachusetts	Plymouth	10,108	9
Massachusetts	Suffolk	44,817	11
Massachusetts	Worcester	5,902	8
Michigan	Alcona	1,726	5
Michigan	Alger	1,245	4
Michigan	Allegan	2,527	6
Michigan	Alpena	1,551	5
Michigan	Antrim	2,071	6
Michigan	Arenac	1,626	5
Michigan	Baraga	993	3
Michigan	Barry	2,046	6
Michigan	Bay	2,058	6
Michigan	Benzie	2,460	6
Michigan	Berrien	3,118	7
Michigan	Branch	1,962	5
Michigan	Calhoun	1,851	5
Michigan	Cass	1,824	5
Michigan	Charlevoix	2,542	6
Michigan	Cheboygan	1,663	5
Michigan	Chippewa	1,043	4
Michigan	Clare	1,641	5
Michigan	Clinton	1,897	5
Michigan	Crawford	2,030	6
Michigan	Delta	1,156	4
Michigan	Dickinson	1,126	4
Michigan	Eaton	2,270	6
Michigan	Emmet	2,386	6
Michigan	Genesee	3,082	7
Michigan	Gladwin	1,742	5
Michigan	Gogebic	1,457	4
Michigan	Grand Traverse	3,311	7
Michigan	Gratiot	1,616	5
Michigan	Hillsdale	1,920	5
Michigan	Houghton	1,061	4
Michigan	Huron	1,598	5
Michigan	Ingham	2,303	6
Michigan	Ionia	2,229	6
Michigan	Iosco	1,824	5
Michigan	Iron	1,195	4
Michigan	Isabella	1,603	5
Michigan	Jackson	2,322	6
Michigan	Kalamazoo	2,828	6
Michigan	Kalkaska	1,740	5
Michigan	Kent	3,218	7
Michigan	Keweenaw	1,774	5
Michigan	Lake	1,770	5
Michigan	Lapeer	3,094	7
Michigan	Leelanau	3,747	7
Michigan	Lenawee	2,013	6
Michigan	Livingston	3,826	7
Michigan	Luce	1,094	4
Michigan	Mackinac	1,238	4
Michigan	Macomb	4,886	7
Michigan	Manistee	1,778	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Michigan	Marquette	1,306	4
Michigan	Mason	1,586	5
Michigan	Mecosta	1,762	5
Michigan	Menominee	1,058	4
Michigan	Midland	2,086	6
Michigan	Missaukee	1,759	5
Michigan	Monroe	2,522	6
Michigan	Montcalm	1,764	5
Michigan	Montmorency	1,550	5
Michigan	Muskegon	2,406	6
Michigan	Newaygo	2,151	6
Michigan	Oakland	5,942	8
Michigan	Oceana	2,161	6
Michigan	Ogemaw	1,727	5
Michigan	Ontonagon	910	3
Michigan	Osceola	1,640	5
Michigan	Oscoda	1,776	5
Michigan	Otsego	1,935	5
Michigan	Ottawa	3,482	7
Michigan	Presque Isle	1,598	5
Michigan	Roscommon	2,549	6
Michigan	Saginaw	1,654	5
Michigan	Sanilac	1,678	5
Michigan	Schoolcraft	1,310	4
Michigan	Shiawassee	1,730	5
Michigan	St. Clair	3,176	7
Michigan	St. Joseph	1,851	5
Michigan	Tuscola	1,838	5
Michigan	Van Buren	2,245	6
Michigan	Washtenaw	3,791	7
Michigan	Wayne	5,463	8
Michigan	Wexford	2,223	6
Minnesota	Aitkin	703	3
Minnesota	Anoka	4,820	7
Minnesota	Becker	761	3
Minnesota	Beltrami	587	3
Minnesota	Benton	1,619	5
Minnesota	Big Stone	833	3
Minnesota	Blue Earth	1,734	5
Minnesota	Brown	1,574	5
Minnesota	Carlton	829	3
Minnesota	Carver	2,365	6
Minnesota	Cass	766	3
Minnesota	Chippewa	1,202	4
Minnesota	Chisago	2,318	6
Minnesota	Clay	856	3
Minnesota	Clearwater	501	3
Minnesota	Cook	1,411	4
Minnesota	Cottonwood	1,424	4
Minnesota	Crow Wing	884	3
Minnesota	Dakota	2,762	6
Minnesota	Dodge	1,873	5
Minnesota	Douglas	1,018	4
Minnesota	Faribault	1,683	5
Minnesota	Fillmore	1,403	4
Minnesota	Freeborn	1,758	5
Minnesota	Goodhue	1,917	5
Minnesota	Grant	1,028	4
Minnesota	Hennepin	4,446	7
Minnesota	Houston	1,044	4
Minnesota	Hubbard	694	3
Minnesota	Isanti	1,835	5
Minnesota	Itasca	798	3
Minnesota	Jackson	1,486	4
Minnesota	Kanabec	1,030	4
Minnesota	Kandiyohi	1,282	4
Minnesota	Kittson	450	2
Minnesota	Koochiching	562	3
Minnesota	Lac qui Parle	978	3
Minnesota	Lake	1,386	4
Minnesota	Lake of the Woods	472	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Minnesota	Le Sueur	1,796	5
Minnesota	Lincoln	931	3
Minnesota	Lyon	1,161	4
Minnesota	Mahnomen	537	3
Minnesota	Marshall	489	2
Minnesota	Martin	1,638	5
Minnesota	McLeod	1,676	5
Minnesota	Meeker	1,434	4
Minnesota	Mille Lacs	1,385	4
Minnesota	Morrison	1,070	4
Minnesota	Mower	1,567	5
Minnesota	Murray	1,236	4
Minnesota	Nicollet	1,810	5
Minnesota	Nobles	1,343	4
Minnesota	Norman	668	3
Minnesota	Olmsted	1,771	5
Minnesota	Otter Tail	838	3
Minnesota	Pennington	419	2
Minnesota	Pine	1,015	4
Minnesota	Pipestone	1,126	4
Minnesota	Polk	662	3
Minnesota	Pope	986	3
Minnesota	Ramsey	15,209	9
Minnesota	Red Lake	504	3
Minnesota	Redwood	1,378	4
Minnesota	Renville	1,511	5
Minnesota	Rice	2,186	6
Minnesota	Rock	1,116	4
Minnesota	Roseau	422	2
Minnesota	Scott	2,797	6
Minnesota	Sherburne	2,253	6
Minnesota	Sibley	1,787	5
Minnesota	St. Louis	1,102	4
Minnesota	Stearns	1,263	4
Minnesota	Steele	1,701	5
Minnesota	Stevens	1,178	4
Minnesota	Swift	1,000	3
Minnesota	Todd	931	3
Minnesota	Traverse	905	3
Minnesota	Wabasha	1,500	4
Minnesota	Wadena	812	3
Minnesota	Waseca	1,876	5
Minnesota	Washington	4,160	7
Minnesota	Watonwan	1,486	4
Minnesota	Wilkin	854	3
Minnesota	Winona	1,591	5
Minnesota	Wright	2,218	6
Minnesota	Yellow Medicine	1,029	4
Mississippi	Adams	803	3
Mississippi	Alcorn	1,084	4
Mississippi	Amite	1,258	4
Mississippi	Attala	1,028	4
Mississippi	Benton	776	3
Mississippi	Bolivar	878	3
Mississippi	Calhoun	762	3
Mississippi	Carroll	793	3
Mississippi	Chickasaw	738	3
Mississippi	Choctaw	939	3
Mississippi	Claiborne	962	3
Mississippi	Clarke	1,368	4
Mississippi	Clay	904	3
Mississippi	Coahoma	926	3
Mississippi	Copiah	1,317	4
Mississippi	Covington	1,258	4
Mississippi	DeSoto	1,569	5
Mississippi	Forrest	2,167	6
Mississippi	Franklin	1,315	4
Mississippi	George	2,418	6
Mississippi	Greene	1,303	4
Mississippi	Grenada	972	3
Mississippi	Hancock	1,901	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Mississippi	Harrison	3,082	7
Mississippi	Hinds	1,078	4
Mississippi	Holmes	984	3
Mississippi	Humphreys	902	3
Mississippi	Issaquena	935	3
Mississippi	Itawamba	899	3
Mississippi	Jackson	3,077	7
Mississippi	Jasper	1,108	4
Mississippi	Jefferson	1,174	4
Mississippi	Jefferson Davis	1,060	4
Mississippi	Jones	1,778	5
Mississippi	Kemper	907	3
Mississippi	Lafayette	1,115	4
Mississippi	Lamar	1,590	5
Mississippi	Lauderdale	1,114	4
Mississippi	Lawrence	1,249	4
Mississippi	Leake	1,191	4
Mississippi	Lee	1,070	4
Mississippi	Leflore	888	3
Mississippi	Lincoln	1,804	5
Mississippi	Lowndes	901	3
Mississippi	Madison	1,298	4
Mississippi	Marion	1,085	4
Mississippi	Marshall	1,078	4
Mississippi	Monroe	938	3
Mississippi	Montgomery	727	3
Mississippi	Neshoba	1,706	5
Mississippi	Newton	2,458	6
Mississippi	Noxubee	851	3
Mississippi	Oktibbeha	1,370	4
Mississippi	Panola	885	3
Mississippi	Pearl River	2,229	6
Mississippi	Perry	1,714	5
Mississippi	Pike	1,542	5
Mississippi	Pontotoc	941	3
Mississippi	Prentiss	739	3
Mississippi	Quitman	787	3
Mississippi	Rankin	1,188	4
Mississippi	Scott	1,289	4
Mississippi	Sharkey	851	3
Mississippi	Simpson	1,635	5
Mississippi	Smith	1,568	5
Mississippi	Stone	1,461	4
Mississippi	Sunflower	850	3
Mississippi	Tallahatchie	724	3
Mississippi	Tate	1,359	4
Mississippi	Tippah	990	3
Mississippi	Tishomingo	1,049	4
Mississippi	Tunica	800	3
Mississippi	Union	1,239	4
Mississippi	Walthall	2,319	6
Mississippi	Warren	876	3
Mississippi	Washington	1,008	4
Mississippi	Wayne	1,256	4
Mississippi	Webster	654	3
Mississippi	Wilkinson	1,103	4
Mississippi	Winston	1,336	4
Mississippi	Yalobusha	966	3
Mississippi	Yazoo	882	3
Missouri	Adair	810	3
Missouri	Andrew	1,470	4
Missouri	Atchison	1,314	4
Missouri	Audrain	1,281	4
Missouri	Barry	1,342	4
Missouri	Barton	800	3
Missouri	Bates	959	3
Missouri	Benton	892	3
Missouri	Bollinger	1,034	4
Missouri	Boone	2,035	6
Missouri	Buchanan	1,432	4
Missouri	Butler	1,199	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Missouri	Caldwell	1,095	4
Missouri	Callaway	1,424	4
Missouri	Camden	1,003	4
Missouri	Cape Girardeau	1,513	5
Missouri	Carroll	1,036	4
Missouri	Carter	838	3
Missouri	Cass	1,475	4
Missouri	Cedar	917	3
Missouri	Chariton	1,066	4
Missouri	Christian	1,910	5
Missouri	Clark	932	3
Missouri	Clay	2,714	6
Missouri	Clinton	1,233	4
Missouri	Cole	1,579	5
Missouri	Cooper	1,066	4
Missouri	Crawford	998	3
Missouri	Dade	1,022	4
Missouri	Dallas	1,117	4
Missouri	Daviess	941	3
Missouri	DeKalb	911	3
Missouri	Dent	793	3
Missouri	Douglas	857	3
Missouri	Dunklin	1,549	5
Missouri	Franklin	1,945	5
Missouri	Gasconade	1,269	4
Missouri	Gentry	925	3
Missouri	Greene	2,639	6
Missouri	Grundy	819	3
Missouri	Harrison	761	3
Missouri	Henry	967	3
Missouri	Hickory	866	3
Missouri	Holt	1,193	4
Missouri	Howard	1,067	4
Missouri	Howell	1,098	4
Missouri	Iron	1,066	4
Missouri	Jackson	2,940	6
Missouri	Jasper	1,195	4
Missouri	Jefferson	2,108	6
Missouri	Johnson	1,354	4
Missouri	Knox	1,113	4
Missouri	Laclede	1,102	4
Missouri	Lafayette	1,465	4
Missouri	Lawrence	1,422	4
Missouri	Lewis	885	3
Missouri	Lincoln	1,738	5
Missouri	Linn	804	3
Missouri	Livingston	1,028	4
Missouri	Macon	858	3
Missouri	Madison	778	3
Missouri	Maries	826	3
Missouri	Marion	981	3
Missouri	McDonald	1,623	5
Missouri	Mercer	4,286	7
Missouri	Miller	1,183	4
Missouri	Mississippi	1,484	4
Missouri	Moniteau	1,104	4
Missouri	Monroe	946	3
Missouri	Montgomery	1,311	4
Missouri	Morgan	1,242	4
Missouri	New Madrid	1,470	4
Missouri	Newton	1,408	4
Missouri	Nodaway	956	3
Missouri	Oregon	803	3
Missouri	Osage	1,120	4
Missouri	Ozark	1,093	4
Missouri	Pemiscot	1,418	4
Missouri	Perry	1,190	4
Missouri	Pettis	1,110	4
Missouri	Phelps	1,215	4
Missouri	Pike	1,294	4
Missouri	Platte	1,845	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Missouri	Polk	1,127	4
Missouri	Pulaski	1,048	4
Missouri	Putnam	693	3
Missouri	Ralls	1,150	4
Missouri	Randolph	939	3
Missouri	Ray	1,192	4
Missouri	Reynolds	838	3
Missouri	Ripley	813	3
Missouri	Saline	1,094	4
Missouri	Schuyler	649	3
Missouri	Scotland	898	3
Missouri	Scott	1,396	4
Missouri	Shannon	842	3
Missouri	Shelby	950	3
Missouri	St Louis	2,902	6
Missouri	St. Charles	3,193	7
Missouri	St. Clair	814	3
Missouri	St. Francois	1,626	5
Missouri	Ste. Genevieve	1,157	4
Missouri	Stoddard	1,638	5
Missouri	Stone	1,542	5
Missouri	Sullivan	651	3
Missouri	Taney	1,382	4
Missouri	Texas	822	3
Missouri	Vernon	884	3
Missouri	Warren	1,850	5
Missouri	Washington	1,182	4
Missouri	Wayne	827	3
Missouri	Webster	1,378	4
Missouri	Worth	733	3
Missouri	Wright	1,007	4
Montana	Beaverhead	438	2
Montana	Big Horn	197	1
Montana	Blaine	196	1
Montana	Broadwater	371	2
Montana	Carbon	613	3
Montana	Carter	158	1
Montana	Cascade	340	2
Montana	Chouteau	336	2
Montana	Custer	155	1
Montana	Daniels	234	1
Montana	Dawson	175	1
Montana	Deer Lodge	502	3
Montana	Fallon	210	1
Montana	Fergus	297	2
Montana	Flathead	1,875	5
Montana	Gallatin	873	3
Montana	Garfield	132	1
Montana	Glacier	269	2
Montana	Golden Valley	194	1
Montana	Granite	560	3
Montana	Hill	255	2
Montana	Jefferson	482	2
Montana	Judith Basin	421	2
Montana	Lake	925	3
Montana	Lewis and Clark	452	2
Montana	Liberty	268	2
Montana	Lincoln	2,295	6
Montana	Madison	518	3
Montana	McCone	181	1
Montana	Meagher	347	2
Montana	Mineral	1,550	5
Montana	Missoula	1,150	4
Montana	Musselshell	194	1
Montana	Park	570	3
Montana	Petroleum	222	1
Montana	Phillips	175	1
Montana	Pondera	362	2
Montana	Powder River	174	1
Montana	Powell	496	2
Montana	Prairie	169	1

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Montana	Ravalli	2,141	6
Montana	Richland	232	1
Montana	Roosevelt	239	1
Montana	Rosebud	144	1
Montana	Sanders	877	3
Montana	Sheridan	268	2
Montana	Silver Bow	782	3
Montana	Stillwater	384	2
Montana	Sweet Grass	445	2
Montana	Teton	290	2
Montana	Toole	280	2
Montana	Treasure	191	1
Montana	Valley	206	1
Montana	Wheatland	228	1
Montana	Wibaux	193	1
Montana	Yellowstone	404	2
Nebraska	Adams	1,246	4
Nebraska	Antelope	869	3
Nebraska	Arthur	156	1
Nebraska	Banner	245	1
Nebraska	Blaine	193	1
Nebraska	Boone	922	3
Nebraska	Box Butte	382	2
Nebraska	Boyd	349	2
Nebraska	Brown	274	2
Nebraska	Buffalo	1,050	4
Nebraska	Burt	1,360	4
Nebraska	Butler	1,522	5
Nebraska	Cass	1,660	5
Nebraska	Cedar	960	3
Nebraska	Chase	534	3
Nebraska	Cherry	180	1
Nebraska	Cheyenne	299	2
Nebraska	Clay	1,202	4
Nebraska	Colfax	1,303	4
Nebraska	Cuming	1,257	4
Nebraska	Custer	428	2
Nebraska	Dakota	1,078	4
Nebraska	Dawes	290	2
Nebraska	Dawson	811	3
Nebraska	Deuel	344	2
Nebraska	Dixon	997	3
Nebraska	Dodge	1,564	5
Nebraska	Douglas	3,120	7
Nebraska	Dundy	382	2
Nebraska	Fillmore	1,348	4
Nebraska	Franklin	614	3
Nebraska	Frontier	423	2
Nebraska	Furnas	483	2
Nebraska	Gage	874	3
Nebraska	Garden	204	1
Nebraska	Garfield	281	2
Nebraska	Gosper	669	3
Nebraska	Grant	170	1
Nebraska	Greeley	593	3
Nebraska	Hall	1,329	4
Nebraska	Hamilton	1,473	4
Nebraska	Harlan	571	3
Nebraska	Hayes	332	2
Nebraska	Hitchcock	390	2
Nebraska	Holt	414	2
Nebraska	Hooker	162	1
Nebraska	Howard	799	3
Nebraska	Jefferson	945	3
Nebraska	Johnson	774	3
Nebraska	Kearney	1,158	4
Nebraska	Keith	407	2
Nebraska	Keya Paha	276	2
Nebraska	Kimball	247	1
Nebraska	Knox	581	3
Nebraska	Lancaster	1,570	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Nebraska	Lincoln	407	2
Nebraska	Logan	248	1
Nebraska	Loup	223	1
Nebraska	Madison	1,066	4
Nebraska	McPherson	174	1
Nebraska	Merrick	1,071	4
Nebraska	Morrill	262	2
Nebraska	Nance	734	3
Nebraska	Nemaha	1,017	4
Nebraska	Nuckolls	720	3
Nebraska	Otoe	1,198	4
Nebraska	Pawnee	676	3
Nebraska	Perkins	513	3
Nebraska	Phelps	1,183	4
Nebraska	Pierce	997	3
Nebraska	Platte	1,360	4
Nebraska	Polk	1,481	4
Nebraska	Red Willow	455	2
Nebraska	Richardson	778	3
Nebraska	Rock	255	2
Nebraska	Saline	1,054	4
Nebraska	Sarpy	2,854	6
Nebraska	Saunders	1,618	5
Nebraska	Scotts Bluff	518	3
Nebraska	Seward	1,429	4
Nebraska	Sheridan	202	1
Nebraska	Sherman	497	2
Nebraska	Sioux	222	1
Nebraska	Stanton	1,054	4
Nebraska	Thayer	1,066	4
Nebraska	Thomas	164	1
Nebraska	Thurston	1,068	4
Nebraska	Valley	539	3
Nebraska	Washington	1,802	5
Nebraska	Wayne	1,166	4
Nebraska	Webster	680	3
Nebraska	Wheeler	420	2
Nebraska	York	1,607	5
Nevada	Carson City	2,588	6
Nevada	Churchill	1,250	4
Nevada	Clark	2,854	6
Nevada	Douglas	672	3
Nevada	Elko	131	1
Nevada	Esmeralda	834	3
Nevada	Eureka	184	1
Nevada	Humboldt	304	2
Nevada	Lander	198	1
Nevada	Lincoln	846	3
Nevada	Lyon	1,124	4
Nevada	Mineral	154	1
Nevada	Nye	835	3
Nevada	Pershing	544	3
Nevada	Storey	25,714	10
Nevada	Washoe	476	2
Nevada	White Pine	435	2
New Hampshire	Belknap	2,755	6
New Hampshire	Carroll	2,266	6
New Hampshire	Cheshire	2,541	6
New Hampshire	Coos	957	3
New Hampshire	Grafton	1,718	5
New Hampshire	Hillsborough	4,495	7
New Hampshire	Merrimack	2,146	6
New Hampshire	Rockingham	5,459	8
New Hampshire	Strafford	2,328	6
New Hampshire	Sullivan	2,047	6
New Jersey	Atlantic	4,637	7
New Jersey	Bergen	38,527	11
New Jersey	Burlington	5,422	8
New Jersey	Camden	9,157	8
New Jersey	Cape May	5,639	8
New Jersey	Cumberland	3,771	7

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
New Jersey	Essex	36,694	11
New Jersey	Gloucester	7,588	8
New Jersey	Hudson *	7,396	8
New Jersey	Hunterdon	9,595	8
New Jersey	Mercer	15,084	9
New Jersey	Middlesex	11,731	9
New Jersey	Monmouth	13,750	9
New Jersey	Morris	21,135	10
New Jersey	Ocean	11,618	9
New Jersey	Passaic	25,729	10
New Jersey	Salem	3,658	7
New Jersey	Somerset	11,552	9
New Jersey	Sussex	5,709	8
New Jersey	Union	74,526	12
New Jersey	Warren	5,942	8
New Mexico	Bernalillo	382	2
New Mexico	Catron	109	1
New Mexico	Chaves	170	1
New Mexico	Cibola	122	1
New Mexico	Colfax	179	1
New Mexico	Curry	421	2
New Mexico	De Baca	103	1
New Mexico	Dona Ana	1,252	4
New Mexico	Eddy	204	1
New Mexico	Grant	149	1
New Mexico	Guadalupe	83	1
New Mexico	Harding *	187	1
New Mexico	Hidalgo	111	1
New Mexico	Lea	125	1
New Mexico	Lincoln	147	1
New Mexico	Los Alamos *	187	1
New Mexico	Luna	182	1
New Mexico	McKinley	60	1
New Mexico	Mora	247	1
New Mexico	Otero	193	1
New Mexico	Quay	144	1
New Mexico	Rio Arriba	262	2
New Mexico	Roosevelt	212	1
New Mexico	San Juan	259	2
New Mexico	San Miguel	200	1
New Mexico	Sandoval	157	1
New Mexico	Santa Fe	388	2
New Mexico	Sierra	140	1
New Mexico	Socorro	166	1
New Mexico	Taos	470	2
New Mexico	Torrance	154	1
New Mexico	Union	160	1
New Mexico	Valencia	534	3
New York	Albany	2,548	6
New York	Allegany	845	3
New York	Bronx *	1,366	4
New York	Broome	2,362	6
New York	Cattaraugus	1,034	4
New York	Cayuga	1,218	4
New York	Chautauqua	1,121	4
New York	Chemung	1,104	4
New York	Chenango	886	3
New York	Clinton	865	3
New York	Columbia	2,532	6
New York	Cortland	859	3
New York	Delaware	1,366	4
New York	Dutchess	5,033	8
New York	Erie	1,478	4
New York	Essex	1,148	4
New York	Franklin	777	3
New York	Fulton	1,298	4
New York	Genesee	1,116	4
New York	Greene	1,704	5
New York	Hamilton *	1,366	4
New York	Herkimer	937	3
New York	Jefferson	698	3

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
New York	Kings*	1,366	4
New York	Lewis	656	3
New York	Livingston	1,169	4
New York	Madison	1,014	4
New York	Monroe	1,575	5
New York	Montgomery	1,194	4
New York	Nassau	24,317	10
New York	New York	6,000	8
New York	Niagara	1,353	4
New York	Oneida	945	3
New York	Onondaga	1,187	4
New York	Ontario	1,343	4
New York	Orange	3,471	7
New York	Orleans	993	3
New York	Oswego	1,820	5
New York	Otsego	1,346	4
New York	Putnam	7,612	8
New York	Queens	1,366	4
New York	Rensselaer	2,076	6
New York	Richmond	79,163	12
New York	Rockland	20,123	10
New York	Saratoga	2,254	6
New York	Schenectady	1,706	5
New York	Schoharie	1,374	4
New York	Schuyler	1,244	4
New York	Seneca	1,204	4
New York	St. Lawrence	597	3
New York	Steuben	882	3
New York	Suffolk	14,506	9
New York	Sullivan	2,238	6
New York	Tioga	1,108	4
New York	Tompkins	1,349	4
New York	Ulster	2,831	6
New York	Warren	2,509	6
New York	Washington	1,085	4
New York	Wayne	1,990	5
New York	Westchester	12,075	9
New York	Wyoming	1,073	4
New York	Yates	1,490	4
North Carolina	Alamance	3,094	7
North Carolina	Alexander	3,703	7
North Carolina	Alleghany	2,761	6
North Carolina	Anson	2,219	6
North Carolina	Ashe	3,330	7
North Carolina	Avery	3,490	7
North Carolina	Beaufort	1,538	5
North Carolina	Bertie	1,611	5
North Carolina	Bladen	2,363	6
North Carolina	Brunswick	2,546	6
North Carolina	Buncombe	3,589	7
North Carolina	Burke	3,224	7
North Carolina	Cabarrus	3,922	7
North Carolina	Caldwell	3,879	7
North Carolina	Camden	1,507	5
North Carolina	Carteret	1,680	5
North Carolina	Caswell	2,075	6
North Carolina	Catawba	2,882	6
North Carolina	Chatham	2,710	6
North Carolina	Cherokee	3,951	7
North Carolina	Chowan	1,906	5
North Carolina	Clay	4,134	7
North Carolina	Cleveland	2,442	6
North Carolina	Columbus	1,768	5
North Carolina	Craven	1,922	5
North Carolina	Cumberland	2,024	6
North Carolina	Currituck	2,408	6
North Carolina	Dare	1,014	4
North Carolina	Davidson	3,185	7
North Carolina	Davie	3,317	7
North Carolina	Duplin	2,367	6
North Carolina	Durham	4,333	7

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
North Carolina	Edgecombe	1,659	5
North Carolina	Forsyth	3,647	7
North Carolina	Franklin	2,314	6
North Carolina	Gaston	3,374	7
North Carolina	Gates	1,471	4
North Carolina	Graham	2,985	6
North Carolina	Granville	2,161	6
North Carolina	Greene	2,396	6
North Carolina	Guilford	4,057	7
North Carolina	Halifax	1,448	4
North Carolina	Harnett	2,837	6
North Carolina	Haywood	3,717	7
North Carolina	Henderson	4,194	7
North Carolina	Hertford	1,547	5
North Carolina	Hoke	2,152	6
North Carolina	Hyde	1,455	4
North Carolina	Iredell	3,653	7
North Carolina	Jackson	4,878	7
North Carolina	Johnston	2,866	6
North Carolina	Jones	1,847	5
North Carolina	Lee	2,574	6
North Carolina	Lenoir	2,661	6
North Carolina	Lincoln	3,176	7
North Carolina	Macon	4,831	7
North Carolina	Madison	3,154	7
North Carolina	Martin	1,702	5
North Carolina	McDowell	2,684	6
North Carolina	Mecklenburg	7,693	8
North Carolina	Mitchell	3,465	7
North Carolina	Montgomery	2,670	6
North Carolina	Moore	2,422	6
North Carolina	Nash	2,002	6
North Carolina	New Hanover	7,981	8
North Carolina	Northampton	1,609	5
North Carolina	Onslow	2,359	6
North Carolina	Orange	3,899	7
North Carolina	Pamlico	1,565	5
North Carolina	Pasquotank	1,552	5
North Carolina	Pender	2,494	6
North Carolina	Perquimans	1,828	5
North Carolina	Person	1,970	5
North Carolina	Pitt	1,911	5
North Carolina	Polk	3,746	7
North Carolina	Randolph	3,051	7
North Carolina	Richmond	1,986	5
North Carolina	Robeson	1,595	5
North Carolina	Rockingham	2,132	6
North Carolina	Rowan	2,876	6
North Carolina	Rutherford	2,428	6
North Carolina	Sampson	2,467	6
North Carolina	Scotland	1,775	5
North Carolina	Stanly	2,920	6
North Carolina	Stokes	2,325	6
North Carolina	Surry	2,917	6
North Carolina	Swain	3,569	7
North Carolina	Transylvania	5,134	8
North Carolina	Tyrrell	1,447	4
North Carolina	Union	2,950	6
North Carolina	Vance	1,714	5
North Carolina	Wake	5,110	8
North Carolina	Warren	1,717	5
North Carolina	Washington	1,563	5
North Carolina	Watauga	3,221	7
North Carolina	Wayne	2,530	6
North Carolina	Wilkes	2,398	6
North Carolina	Wilson	1,977	5
North Carolina	Yadkin	2,606	6
North Carolina	Yancey	3,702	7
North Dakota	Adams	200	1
North Dakota	Barnes	358	2
North Dakota	Benson	284	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
North Dakota	Billings	200	1
North Dakota	Bottineau	327	2
North Dakota	Bowman	199	1
North Dakota	Burke	236	1
North Dakota	Burleigh	271	2
North Dakota	Cass	701	3
North Dakota	Cavalier	434	2
North Dakota	Dickey	402	2
North Dakota	Divide	228	1
North Dakota	Dunn	202	1
North Dakota	Eddy	252	2
North Dakota	Emmons	224	1
North Dakota	Foster	319	2
North Dakota	Golden Valley	197	1
North Dakota	Grand Forks	634	3
North Dakota	Grant	247	1
North Dakota	Griggs	283	2
North Dakota	Hettinger	269	2
North Dakota	Kidder	225	1
North Dakota	LaMoure	446	2
North Dakota	Logan	196	1
North Dakota	McHenry	263	2
North Dakota	McIntosh	230	1
North Dakota	McKenzie	243	1
North Dakota	McLean	342	2
North Dakota	Mercer	214	1
North Dakota	Morton	242	1
North Dakota	Mountrail	245	1
North Dakota	Nelson	276	2
North Dakota	Oliver	194	1
North Dakota	Pembina	612	3
North Dakota	Pierce	277	2
North Dakota	Ramsey	294	2
North Dakota	Ransom	416	2
North Dakota	Renville	429	2
North Dakota	Richland	756	3
North Dakota	Rolette	263	2
North Dakota	Sargent	434	2
North Dakota	Sheridan	225	1
North Dakota	Sioux	161	1
North Dakota	Slope	195	1
North Dakota	Stark	259	2
North Dakota	Steele	462	2
North Dakota	Stutsman	326	2
North Dakota	Towner	287	2
North Dakota	Traill	674	3
North Dakota	Walsh	575	3
North Dakota	Ward	335	2
North Dakota	Wells	300	2
North Dakota	Williams	258	2
Ohio	Adams	1,512	5
Ohio	Allen	2,425	6
Ohio	Ashland	2,312	6
Ohio	Ashtabula	1,919	5
Ohio	Athens	1,424	4
Ohio	Auglaize	2,346	6
Ohio	Belmont	1,315	4
Ohio	Brown	1,894	5
Ohio	Butler	3,289	7
Ohio	Carroll	1,673	5
Ohio	Champaign	2,274	6
Ohio	Clark	2,831	6
Ohio	Clermont	2,889	6
Ohio	Clinton	2,320	6
Ohio	Columbiana	2,317	6
Ohio	Coshocton	1,822	5
Ohio	Crawford	1,950	5
Ohio	Cuyahoga	17,394	9
Ohio	Darke	2,536	6
Ohio	Defiance	1,655	5
Ohio	Delaware	3,034	7

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Ohio	Erie	2,494	6
Ohio	Fairfield	2,659	6
Ohio	Fayette	1,938	5
Ohio	Franklin	3,747	7
Ohio	Fulton	2,123	6
Ohio	Gallia	1,439	4
Ohio	Geauga	4,966	7
Ohio	Greene	2,466	6
Ohio	Guernsey	1,532	5
Ohio	Hamilton	4,110	7
Ohio	Hancock	1,939	5
Ohio	Hardin	1,755	5
Ohio	Harrison	926	3
Ohio	Henry	2,018	6
Ohio	Highland	1,962	5
Ohio	Hocking	2,013	6
Ohio	Holmes	2,787	6
Ohio	Huron	2,217	6
Ohio	Jackson	1,094	4
Ohio	Jefferson	1,493	4
Ohio	Knox	2,302	6
Ohio	Lake	6,431	8
Ohio	Lawrence	1,428	4
Ohio	Licking	2,814	6
Ohio	Logan	1,718	5
Ohio	Lorain	2,531	6
Ohio	Lucas	2,692	6
Ohio	Madison	2,479	6
Ohio	Mahoning	2,488	6
Ohio	Marion	1,783	5
Ohio	Medina	3,881	7
Ohio	Meigs	1,385	4
Ohio	Mercer	2,606	6
Ohio	Miami	2,620	6
Ohio	Monroe	1,126	4
Ohio	Montgomery	3,101	7
Ohio	Morgan	1,174	4
Ohio	Morrow	1,971	5
Ohio	Muskingum	1,539	5
Ohio	Noble	1,289	4
Ohio	Ottawa	1,742	5
Ohio	Paulding	1,672	5
Ohio	Perry	1,809	5
Ohio	Pickaway	2,386	6
Ohio	Pike	1,322	4
Ohio	Portage	3,396	7
Ohio	Preble	2,008	6
Ohio	Putnam	1,909	5
Ohio	Richland	2,187	6
Ohio	Ross	1,652	5
Ohio	Sandusky	1,840	5
Ohio	Scioto	1,295	4
Ohio	Seneca	1,877	5
Ohio	Shelby	2,194	6
Ohio	Stark	3,231	7
Ohio	Summit	4,578	7
Ohio	Trumbull	2,414	6
Ohio	Tuscarawas	2,285	6
Ohio	Union	2,050	6
Ohio	Van Wert	2,079	6
Ohio	Vinton	1,651	5
Ohio	Warren	3,881	7
Ohio	Washington	1,576	5
Ohio	Wayne	3,568	7
Ohio	Williams	1,799	5
Ohio	Wood	2,211	6
Ohio	Wyandot	2,227	6
Oklahoma	Adair	943	3
Oklahoma	Alfalfa	565	3
Oklahoma	Atoka	502	3
Oklahoma	Beaver	292	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Oklahoma	Beckham	460	2
Oklahoma	Blaine	490	2
Oklahoma	Bryan	694	3
Oklahoma	Caddo	495	2
Oklahoma	Canadian	800	3
Oklahoma	Carter	610	3
Oklahoma	Cherokee	925	3
Oklahoma	Choctaw	486	2
Oklahoma	Cimarron	241	1
Oklahoma	Cleveland	1,490	4
Oklahoma	Coal	507	3
Oklahoma	Comanche	614	3
Oklahoma	Cotton	418	2
Oklahoma	Craig	616	3
Oklahoma	Creek	725	3
Oklahoma	Custer	463	2
Oklahoma	Delaware	1,206	4
Oklahoma	Dewey	417	2
Oklahoma	Ellis	262	2
Oklahoma	Garfield	547	3
Oklahoma	Garvin	658	3
Oklahoma	Grady	631	3
Oklahoma	Grant	466	2
Oklahoma	Greer	317	2
Oklahoma	Harmon	292	2
Oklahoma	Harper	264	2
Oklahoma	Haskell	704	3
Oklahoma	Hughes	485	2
Oklahoma	Jackson	418	2
Oklahoma	Jefferson	401	2
Oklahoma	Johnston	601	3
Oklahoma	Kay	590	3
Oklahoma	Kingfisher	603	3
Oklahoma	Kiowa	402	2
Oklahoma	Latimer	512	3
Oklahoma	Le Flore	976	3
Oklahoma	Lincoln	698	3
Oklahoma	Logan	780	3
Oklahoma	Love	635	3
Oklahoma	Major	446	2
Oklahoma	Marshall	539	3
Oklahoma	Mayes	994	3
Oklahoma	McClain	919	3
Oklahoma	McCurtain	763	3
Oklahoma	McIntosh	618	3
Oklahoma	Murray	554	3
Oklahoma	Muskogee	724	3
Oklahoma	Noble	574	3
Oklahoma	Nowata	609	3
Oklahoma	Okfuskee	617	3
Oklahoma	Oklahoma	1,542	5
Oklahoma	Okmulgee	725	3
Oklahoma	Osage	434	2
Oklahoma	Ottawa	1,014	4
Oklahoma	Pawnee	476	2
Oklahoma	Payne	804	3
Oklahoma	Pittsburg	605	3
Oklahoma	Pontotoc	646	3
Oklahoma	Pottawatomie	793	3
Oklahoma	Pushmataha	444	2
Oklahoma	Roger Mills	312	2
Oklahoma	Rogers	1,124	4
Oklahoma	Seminole	594	3
Oklahoma	Sequoyah	1,029	4
Oklahoma	Stephens	541	3
Oklahoma	Texas	415	2
Oklahoma	Tillman	438	2
Oklahoma	Tulsa	1,698	5
Oklahoma	Wagoner	1,075	4
Oklahoma	Washington	824	3
Oklahoma	Washita	472	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Oklahoma	Woods	389	2
Oklahoma	Woodward	364	2
Oregon	Baker	437	2
Oregon	Benton	3,083	7
Oregon	Clackamas	7,680	8
Oregon	Clatsop	2,221	6
Oregon	Columbia	3,050	7
Oregon	Coos	2,691	6
Oregon	Crook	425	2
Oregon	Curry	1,559	5
Oregon	Deschutes	4,138	7
Oregon	Douglas	1,648	5
Oregon	Gilliam	244	1
Oregon	Grant	245	1
Oregon	Harney	231	1
Oregon	Hood River	7,491	8
Oregon	Jackson	2,259	6
Oregon	Jefferson	449	2
Oregon	Josephine	3,322	7
Oregon	Klamath	810	3
Oregon	Lake	390	2
Oregon	Lane	3,658	7
Oregon	Lincoln	2,086	6
Oregon	Linn	2,279	6
Oregon	Malheur	430	2
Oregon	Marion	4,086	7
Oregon	Morrow	292	2
Oregon	Multnomah	8,701	8
Oregon	Polk	3,958	7
Oregon	Sherman	294	2
Oregon	Tillamook	4,207	7
Oregon	Umatilla	612	3
Oregon	Union	835	3
Oregon	Wallowa	491	2
Oregon	Wasco	315	2
Oregon	Washington	5,835	8
Oregon	Wheeler	219	1
Oregon	Yamhill	5,508	8
Pennsylvania	Adams	3,025	7
Pennsylvania	Allegheny	3,810	7
Pennsylvania	Armstrong	1,866	5
Pennsylvania	Beaver	2,381	6
Pennsylvania	Bedford	1,584	5
Pennsylvania	Berks	4,422	7
Pennsylvania	Blair	2,501	6
Pennsylvania	Bradford	1,432	4
Pennsylvania	Bucks	7,534	8
Pennsylvania	Butler	3,160	7
Pennsylvania	Cambria	2,150	6
Pennsylvania	Cameron	1,502	5
Pennsylvania	Carbon	3,549	7
Pennsylvania	Centre	2,720	6
Pennsylvania	Chester	8,286	8
Pennsylvania	Clarion	1,470	4
Pennsylvania	Clearfield	1,320	4
Pennsylvania	Clinton	2,243	6
Pennsylvania	Columbia	2,510	6
Pennsylvania	Crawford	1,390	4
Pennsylvania	Cumberland	3,061	7
Pennsylvania	Dauphin	4,233	7
Pennsylvania	Delaware	18,282	9
Pennsylvania	Elk	2,483	6
Pennsylvania	Erie	1,856	5
Pennsylvania	Fayette	1,475	4
Pennsylvania	Forest	1,606	5
Pennsylvania	Franklin	3,103	7
Pennsylvania	Fulton	1,854	5
Pennsylvania	Greene	947	3
Pennsylvania	Huntingdon	1,949	5
Pennsylvania	Indiana	1,503	5
Pennsylvania	Jefferson	1,485	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Pennsylvania	Juniata	2,447	6
Pennsylvania	Lackawanna	2,564	6
Pennsylvania	Lancaster	6,364	8
Pennsylvania	Lawrence	1,953	5
Pennsylvania	Lebanon	4,279	7
Pennsylvania	Lehigh	3,603	7
Pennsylvania	Luzerne	2,833	6
Pennsylvania	Lycoming	1,854	5
Pennsylvania	McKean	943	3
Pennsylvania	Mercer	1,656	5
Pennsylvania	Mifflin	2,551	6
Pennsylvania	Monroe	4,153	7
Pennsylvania	Montgomery	10,198	9
Pennsylvania	Montour	2,397	6
Pennsylvania	Northampton	3,890	7
Pennsylvania	Northumberland	2,479	6
Pennsylvania	Perry	2,562	6
Pennsylvania	Philadelphia	20,872	10
Pennsylvania	Pike	2,302	6
Pennsylvania	Potter	1,342	4
Pennsylvania	Schuylkill	2,706	6
Pennsylvania	Snyder	2,846	6
Pennsylvania	Somerset	1,516	5
Pennsylvania	Sullivan	1,502	5
Pennsylvania	Susquehanna	1,730	5
Pennsylvania	Tioga	1,862	5
Pennsylvania	Union	3,325	7
Pennsylvania	Venango	1,191	4
Pennsylvania	Warren	1,030	4
Pennsylvania	Washington	1,676	5
Pennsylvania	Wayne	1,689	5
Pennsylvania	Westmoreland	2,251	6
Pennsylvania	Wyoming	1,821	5
Pennsylvania	York	3,844	7
Puerto Rico	All Areas	4,693	7
Rhode Island	Bristol	17,945	9
Rhode Island	Kent	5,242	8
Rhode Island	Newport	10,690	9
Rhode Island	Providence	7,186	8
Rhode Island	Washington	6,194	8
South Carolina	Abbeville	1,623	5
South Carolina	Aiken	1,775	5
South Carolina	Allendale	1,002	4
South Carolina	Anderson	2,651	6
South Carolina	Bamberg	1,051	4
South Carolina	Barnwell	1,045	4
South Carolina	Beaufort	1,978	5
South Carolina	Berkeley	2,196	6
South Carolina	Calhoun	1,182	4
South Carolina	Charleston	3,974	7
South Carolina	Cherokee	1,624	5
South Carolina	Chester	1,598	5
South Carolina	Chesterfield	1,126	4
South Carolina	Clarendon	1,132	4
South Carolina	Colleton	1,400	4
South Carolina	Darlington	797	3
South Carolina	Dillon	1,113	4
South Carolina	Dorchester	1,588	5
South Carolina	Edgefield	1,626	5
South Carolina	Fairfield	1,194	4
South Carolina	Florence	1,256	4
South Carolina	Georgetown	1,698	5
South Carolina	Greenville	2,722	6
South Carolina	Greenwood	1,486	4
South Carolina	Hampton	1,198	4
South Carolina	Horry	1,737	5
South Carolina	Jasper	1,163	4
South Carolina	Kershaw	1,693	5
South Carolina	Lancaster	1,763	5
South Carolina	Laurens	1,789	5
South Carolina	Lee	1,105	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
South Carolina	Lexington	2,224	6
South Carolina	Marion	1,202	4
South Carolina	Marlboro	963	3
South Carolina	McCormick	2,101	6
South Carolina	Newberry	1,642	5
South Carolina	Oconee	3,834	7
South Carolina	Orangeburg	1,097	4
South Carolina	Pickens	3,722	7
South Carolina	Richland	2,637	6
South Carolina	Saluda	1,613	5
South Carolina	Spartanburg	3,223	7
South Carolina	Sumter	1,566	5
South Carolina	Union	1,398	4
South Carolina	Williamsburg	1,324	4
South Carolina	York	3,254	7
South Dakota	Aurora	474	2
South Dakota	Beadle	430	2
South Dakota	Bennett	193	1
South Dakota	Bon Homme	630	3
South Dakota	Brookings	697	3
South Dakota	Brown	590	3
South Dakota	Brule	394	2
South Dakota	Buffalo	218	1
South Dakota	Butte	210	1
South Dakota	Campbell	251	2
South Dakota	Charles Mix	477	2
South Dakota	Clark	506	3
South Dakota	Clay	1,021	4
South Dakota	Codington	590	3
South Dakota	Corson	138	1
South Dakota	Custer	310	2
South Dakota	Davison	567	3
South Dakota	Day	481	2
South Dakota	Deuel	566	3
South Dakota	Dewey	170	1
South Dakota	Douglas	525	3
South Dakota	Edmunds	372	2
South Dakota	Fall River	203	1
South Dakota	Faulk	313	2
South Dakota	Grant	582	3
South Dakota	Gregory	317	2
South Dakota	Haakon	174	1
South Dakota	Hamlin	634	3
South Dakota	Hand	278	2
South Dakota	Hanson	616	3
South Dakota	Harding	119	1
South Dakota	Hughes	353	2
South Dakota	Hutchinson	640	3
South Dakota	Hyde	242	1
South Dakota	Jackson	160	1
South Dakota	Jerauld	321	2
South Dakota	Jones	214	1
South Dakota	Kingsbury	594	3
South Dakota	Lake	786	3
South Dakota	Lawrence	579	3
South Dakota	Lincoln	1,338	4
South Dakota	Lyman	275	2
South Dakota	Marshall	482	2
South Dakota	McCook	688	3
South Dakota	McPherson	277	2
South Dakota	Meade	214	1
South Dakota	Mellette	166	1
South Dakota	Miner	556	3
South Dakota	Minnehaha	1,169	4
South Dakota	Moody	964	3
South Dakota	Pennington	281	2
South Dakota	Perkins	151	1
South Dakota	Potter	354	2
South Dakota	Roberts	560	3
South Dakota	Sanborn	390	2
South Dakota	Shannon	134	1

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
South Dakota	Spink	451	2
South Dakota	Stanley	166	1
South Dakota	Sully	386	2
South Dakota	Todd	166	1
South Dakota	Tripp	270	2
South Dakota	Turner	1,033	4
South Dakota	Union	1,538	5
South Dakota	Walworth	272	2
South Dakota	Yankton	839	3
South Dakota	Ziebach	138	1
Tennessee	Anderson	3,226	7
Tennessee	Bedford	1,995	5
Tennessee	Benton	1,264	4
Tennessee	Bledsoe	1,739	5
Tennessee	Blount	4,243	7
Tennessee	Bradley	3,043	7
Tennessee	Campbell	1,576	5
Tennessee	Cannon	2,214	6
Tennessee	Carroll	1,340	4
Tennessee	Carter	2,426	6
Tennessee	Cheatham	2,487	6
Tennessee	Chester	1,315	4
Tennessee	Claiborne	1,472	4
Tennessee	Clay	1,212	4
Tennessee	Cocke	2,247	6
Tennessee	Coffee	2,065	6
Tennessee	Crockett	1,638	5
Tennessee	Cumberland	2,056	6
Tennessee	Davidson	5,247	8
Tennessee	Decatur	1,061	4
Tennessee	DeKalb	2,035	6
Tennessee	Dickson	2,090	6
Tennessee	Dyer	1,517	5
Tennessee	Fayette	1,625	5
Tennessee	Fentress	1,802	5
Tennessee	Franklin	2,145	6
Tennessee	Gibson	1,275	4
Tennessee	Giles	1,674	5
Tennessee	Grainger	1,651	5
Tennessee	Greene	2,353	6
Tennessee	Grundy	1,709	5
Tennessee	Hamblen	3,082	7
Tennessee	Hamilton	2,459	6
Tennessee	Hancock	1,563	5
Tennessee	Hardeman	989	3
Tennessee	Hardin	1,181	4
Tennessee	Hawkins	2,173	6
Tennessee	Haywood	1,297	4
Tennessee	Henderson	1,115	4
Tennessee	Henry	1,229	4
Tennessee	Hickman	1,215	4
Tennessee	Houston	1,166	4
Tennessee	Humphreys	1,279	4
Tennessee	Jackson	1,385	4
Tennessee	Jefferson	3,082	7
Tennessee	Johnson	2,995	6
Tennessee	Knox	4,136	7
Tennessee	Lake	1,207	4
Tennessee	Lauderdale	1,136	4
Tennessee	Lawrence	1,446	4
Tennessee	Lewis	1,525	5
Tennessee	Lincoln	1,619	5
Tennessee	Loudon	3,150	7
Tennessee	Macon	2,118	6
Tennessee	Madison	2,024	6
Tennessee	Marion	1,607	5
Tennessee	Marshall	1,804	5
Tennessee	Maury	2,063	6
Tennessee	McMinn	2,251	6
Tennessee	McNairy	849	3
Tennessee	Meigs	2,250	6

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Tennessee	Monroe	2,341	6
Tennessee	Montgomery	1,930	5
Tennessee	Moore	1,673	5
Tennessee	Morgan	1,858	5
Tennessee	Obion	1,333	4
Tennessee	Overton	1,984	5
Tennessee	Perry	1,187	4
Tennessee	Pickett	1,891	5
Tennessee	Polk	3,309	7
Tennessee	Putnam	2,383	6
Tennessee	Rhea	2,164	6
Tennessee	Roane	2,854	6
Tennessee	Robertson	2,038	6
Tennessee	Rutherford	2,367	6
Tennessee	Scott	1,619	5
Tennessee	Sequatchie	1,810	5
Tennessee	Sevier	3,016	7
Tennessee	Shelby	3,057	7
Tennessee	Smith	1,668	5
Tennessee	Stewart	1,655	5
Tennessee	Sullivan	2,788	6
Tennessee	Sumner	2,637	6
Tennessee	Tipton	1,558	5
Tennessee	Trousdale	2,103	6
Tennessee	Unicoi	5,030	8
Tennessee	Union	2,150	6
Tennessee	Van Buren	1,586	5
Tennessee	Warren	1,958	5
Tennessee	Washington	3,245	7
Tennessee	Wayne	1,030	4
Tennessee	Weakley	1,219	4
Tennessee	White	2,006	6
Tennessee	Williamson	4,133	7
Tennessee	Wilson	2,646	6
Texas	Anderson	830	3
Texas	Andrews	131	1
Texas	Angelina	1,856	5
Texas	Aransas	806	3
Texas	Archer	423	2
Texas	Armstrong	299	2
Texas	Atascosa	760	3
Texas	Austin	1,741	5
Texas	Bailey	352	2
Texas	Bandera	1,390	4
Texas	Bastrop	1,487	4
Texas	Baylor	414	2
Texas	Bee	661	3
Texas	Bell	1,034	4
Texas	Bexar	1,600	5
Texas	Blanco	1,953	5
Texas	Borden	278	2
Texas	Bosque	1,182	4
Texas	Bowie	1,301	4
Texas	Brazoria	1,213	4
Texas	Brazos	1,370	4
Texas	Brewster	92	1
Texas	Briscoe	219	1
Texas	Brooks	461	2
Texas	Brown	718	3
Texas	Burleson	1,122	4
Texas	Burnet	1,452	4
Texas	Caldwell	1,341	4
Texas	Calhoun	694	3
Texas	Callahan	474	2
Texas	Cameron	1,239	4
Texas	Camp	1,512	5
Texas	Carson	355	2
Texas	Cass	1,003	4
Texas	Castro	532	3
Texas	Chambers	725	3
Texas	Cherokee	1,086	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Texas	Childress	258	2
Texas	Clay	509	3
Texas	Cochran	295	2
Texas	Coke	418	2
Texas	Coleman	490	2
Texas	Collin	2,027	6
Texas	Collingsworth	365	2
Texas	Colorado	1,210	4
Texas	Comal	1,682	5
Texas	Comanche	782	3
Texas	Concho	411	2
Texas	Cooke	1,130	4
Texas	Coryell	850	3
Texas	Cottle	187	1
Texas	Crane	90	1
Texas	Crockett	162	1
Texas	Crosby	373	2
Texas	Culberson	66	1
Texas	Dallam	481	2
Texas	Dallas	2,375	6
Texas	Dawson	425	2
Texas	Deaf Smith	352	2
Texas	Delta	754	3
Texas	Denton	2,318	6
Texas	DeWitt	959	3
Texas	Dickens	229	1
Texas	Dimmit	394	2
Texas	Donley	288	2
Texas	Duval	580	3
Texas	Eastland	583	3
Texas	Ector	113	1
Texas	Edwards	334	2
Texas	El Paso	1,750	5
Texas	Ellis	1,270	4
Texas	Erath	1,066	4
Texas	Falls	694	3
Texas	Fannin	920	3
Texas	Fayette	1,503	5
Texas	Fisher	342	2
Texas	Floyd	387	2
Texas	Foard	274	2
Texas	Fort Bend	1,541	5
Texas	Franklin	982	3
Texas	Freestone	720	3
Texas	Frio	626	3
Texas	Gaines	482	2
Texas	Galveston	1,261	4
Texas	Garza	213	1
Texas	Gillespie	1,595	5
Texas	Glasscock	282	2
Texas	Goliad	726	3
Texas	Gonzales	939	3
Texas	Gray	342	2
Texas	Grayson	1,537	5
Texas	Gregg	1,163	4
Texas	Grimes	1,438	4
Texas	Guadalupe	1,617	5
Texas	Hale	473	2
Texas	Hall	231	1
Texas	Hamilton	720	3
Texas	Hansford	295	2
Texas	Hardeman	279	2
Texas	Hardin	1,008	4
Texas	Harris	2,098	6
Texas	Harrison	959	3
Texas	Hartley	301	2
Texas	Haskell	338	2
Texas	Hays	2,302	6
Texas	Hemphill	213	1
Texas	Henderson	1,309	4
Texas	Hidalgo	1,612	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Texas	Hill	958	3
Texas	Hockley	390	2
Texas	Hood	1,857	5
Texas	Hopkins	1,124	4
Texas	Houston	864	3
Texas	Howard	355	2
Texas	Hudspeth	121	1
Texas	Hunt	1,268	4
Texas	Hutchinson	202	1
Texas	Irion	187	1
Texas	Jack	570	3
Texas	Jackson	871	3
Texas	Jasper	1,229	4
Texas	Jeff Davis	105	1
Texas	Jefferson	688	3
Texas	Jim Hogg	358	2
Texas	Jim Wells	500	2
Texas	Johnson	1,748	5
Texas	Jones	416	2
Texas	Karnes	654	3
Texas	Kaufman	1,245	4
Texas	Kendall	1,734	5
Texas	Kenedy	282	2
Texas	Kent	166	1
Texas	Kerr	907	3
Texas	Kimble	521	3
Texas	King	170	1
Texas	Kinney	318	2
Texas	Kleberg	478	2
Texas	Knox	238	1
Texas	La Salle	474	2
Texas	Lamar	704	3
Texas	Lamb	418	2
Texas	Lampasas	972	3
Texas	Lavaca	1,024	4
Texas	Lee	1,156	4
Texas	Leon	854	3
Texas	Liberty	1,205	4
Texas	Limestone	594	3
Texas	Lipscomb	294	2
Texas	Live Oak	568	3
Texas	Llano	1,141	4
Texas	Loving	64	1
Texas	Lubbock	649	3
Texas	Lynn	377	2
Texas	Madison	910	3
Texas	Marion	781	3
Texas	Martin	347	2
Texas	Mason	777	3
Texas	Matagorda	811	3
Texas	Maverick	234	1
Texas	McCulloch	579	3
Texas	McLennan	998	3
Texas	McMullen	566	3
Texas	Medina	902	3
Texas	Menard	395	2
Texas	Midland	307	2
Texas	Milam	949	3
Texas	Mills	778	3
Texas	Mitchell	273	2
Texas	Montague	1,008	4
Texas	Montgomery	2,247	6
Texas	Moore	459	2
Texas	Morris	666	3
Texas	Motley	214	1
Texas	Nacogdoches	1,094	4
Texas	Navarro	694	3
Texas	Newton	766	3
Texas	Nolan	380	2
Texas	Nueces	757	3
Texas	Ochiltree	346	2

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Texas	Oldham	170	1
Texas	Orange	1,363	4
Texas	Palo Pinto	640	3
Texas	Panola	806	3
Texas	Parker	1,830	5
Texas	Parmer	479	2
Texas	Pecos	111	1
Texas	Polk	1,087	4
Texas	Potter	297	2
Texas	Presidio	259	2
Texas	Rains	1,252	4
Texas	Randall	444	2
Texas	Reagan	163	1
Texas	Real	492	2
Texas	Red River	703	3
Texas	Reeves	111	1
Texas	Refugio	344	2
Texas	Roberts	174	1
Texas	Robertson	851	3
Texas	Rockwall	2,503	6
Texas	Runnels	478	2
Texas	Rusk	1,030	4
Texas	Sabine	1,525	5
Texas	San Augustine	1,061	4
Texas	San Jacinto	1,694	5
Texas	San Patricio	710	3
Texas	San Saba	614	3
Texas	Schleicher	271	2
Texas	Scurry	304	2
Texas	Shackelford	350	2
Texas	Shelby	1,484	4
Texas	Sherman	448	2
Texas	Smith	1,253	4
Texas	Somervell	1,385	4
Texas	Starr	530	3
Texas	Stephens	384	2
Texas	Sterling	160	1
Texas	Stonewall	234	1
Texas	Sutton	290	2
Texas	Swisher	368	2
Texas	Tarrant	2,409	6
Texas	Taylor	529	3
Texas	Terrell	86	1
Texas	Terry	488	2
Texas	Throckmorton	291	2
Texas	Titus	1,269	4
Texas	Tom Green	502	3
Texas	Travis	1,441	4
Texas	Trinity	998	3
Texas	Tyler	1,561	5
Texas	Upshur	1,245	4
Texas	Upton	110	1
Texas	Uvalde	516	3
Texas	Val Verde	169	1
Texas	Van Zandt	1,292	4
Texas	Victoria	718	3
Texas	Walker	1,962	5
Texas	Waller	2,244	6
Texas	Ward	110	1
Texas	Washington	1,967	5
Texas	Webb	357	2
Texas	Wharton	931	3
Texas	Wheeler	312	2
Texas	Wichita	522	3
Texas	Wilbarger	274	2
Texas	Willacy	853	3
Texas	Williamson	1,876	5
Texas	Wilson	1,052	4
Texas	Winkler	82	1
Texas	Wise	1,508	5
Texas	Wood	1,198	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Texas	Yoakum	463	2
Texas	Young	455	2
Texas	Zapata	532	3
Texas	Zavala	522	3
Utah	Beaver	1,595	5
Utah	Box Elder	422	2
Utah	Cache	1,502	5
Utah	Carbon	351	2
Utah	Daggett	560	3
Utah	Davis	3,042	7
Utah	Duchesne	295	2
Utah	Emery	689	3
Utah	Garfield	1,073	4
Utah	Grand	846	3
Utah	Iron	646	3
Utah	Juab	455	2
Utah	Kane	465	2
Utah	Millard	651	3
Utah	Morgan	848	3
Utah	Piute	1,065	4
Utah	Rich	252	2
Utah	Salt Lake	3,794	7
Utah	San Juan	217	1
Utah	Sanpete	976	3
Utah	Sevier	1,064	4
Utah	Summit	1,000	3
Utah	Tooele	382	2
Utah	Uintah	186	1
Utah	Utah	2,228	6
Utah	Wasatch	2,349	6
Utah	Washington	1,327	4
Utah	Wayne	1,342	4
Utah	Weber	4,618	7
Vermont	Addison	1,436	4
Vermont	Bennington	1,374	4
Vermont	Caledonia	1,610	5
Vermont	Chittenden	1,973	5
Vermont	Essex	1,134	4
Vermont	Franklin	1,217	4
Vermont	Grand Isle	2,546	6
Vermont	Lamoille	1,636	5
Vermont	Orange	1,470	4
Vermont	Orleans	1,229	4
Vermont	Rutland	2,106	6
Vermont	Washington	1,907	5
Vermont	Windham	1,954	5
Vermont	Windsor	2,835	6
Virginia	Accomack	1,570	5
Virginia	Albemarle	3,557	7
Virginia	Alleghany	1,758	5
Virginia	Amelia	1,796	5
Virginia	Amherst	1,922	5
Virginia	Appomattox	1,226	4
Virginia	Arlington	2,140	6
Virginia	Augusta	2,367	6
Virginia	Bath	1,692	5
Virginia	Bedford	2,336	6
Virginia	Bland	1,162	4
Virginia	Botetourt	2,186	6
Virginia	Brunswick	1,097	4
Virginia	Buchanan	2,140	6
Virginia	Buckingham	1,524	5
Virginia	Campbell	1,499	4
Virginia	Caroline	1,829	5
Virginia	Carroll	2,070	6
Virginia	Charles City	2,151	6
Virginia	Charlotte	1,058	4
Virginia	Chesapeake City	2,800	6
Virginia	Chesterfield	4,206	7
Virginia	Clarke	3,825	7
Virginia	Craig	1,522	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Virginia	Culpeper	3,330	7
Virginia	Cumberland	1,774	5
Virginia	Dickenson	1,245	4
Virginia	Dinwiddie	1,308	4
Virginia	Essex	1,529	5
Virginia	Fairfax	6,689	8
Virginia	Fauquier	4,800	7
Virginia	Floyd	1,690	5
Virginia	Fluvanna	1,859	5
Virginia	Franklin	1,746	5
Virginia	Frederick	2,941	6
Virginia	Giles	1,670	5
Virginia	Gloucester	2,637	6
Virginia	Goochland	2,401	6
Virginia	Grayson	2,094	6
Virginia	Greene	3,100	7
Virginia	Greensville	1,119	4
Virginia	Halifax	1,270	4
Virginia	Hanover	3,050	7
Virginia	Henrico	3,217	7
Virginia	Henry	1,266	4
Virginia	Highland	1,838	5
Virginia	Isle of Wight	1,510	5
Virginia	James City	4,134	7
Virginia	King and Queen	1,586	5
Virginia	King George	2,294	6
Virginia	King William	1,614	5
Virginia	Lancaster	1,994	5
Virginia	Lee	1,381	4
Virginia	Loudoun	8,646	8
Virginia	Louisa	1,898	5
Virginia	Lunenburg	1,066	4
Virginia	Madison	2,478	6
Virginia	Mathews	2,153	6
Virginia	Mecklenburg	1,266	4
Virginia	Middlesex	2,181	6
Virginia	Montgomery	2,505	6
Virginia	Nelson	1,682	5
Virginia	New Kent	2,262	6
Virginia	Northampton	1,915	5
Virginia	Northumberland	1,538	5
Virginia	Nottoway	1,688	5
Virginia	Orange	2,510	6
Virginia	Page	3,132	7
Virginia	Patrick	1,316	4
Virginia	Pittsylvania	1,266	4
Virginia	Powhatan	2,422	6
Virginia	Prince Edward	1,374	4
Virginia	Prince George	1,571	5
Virginia	Prince William	5,283	8
Virginia	Pulaski	1,795	5
Virginia	Rappahannock	2,952	6
Virginia	Richmond	1,390	4
Virginia	Roanoke	2,669	6
Virginia	Rockbridge	2,299	6
Virginia	Rockingham	3,234	7
Virginia	Russell	1,282	4
Virginia	Scott	1,250	4
Virginia	Shenandoah	2,624	6
Virginia	Smyth	1,252	4
Virginia	Southampton	1,575	5
Virginia	Spotsylvania	3,430	7
Virginia	Stafford	3,904	7
Virginia	Suffolk	1,871	5
Virginia	Surry	1,524	5
Virginia	Sussex	1,243	4
Virginia	Tazewell	1,249	4
Virginia	Virginia Beach City	2,916	6
Virginia	Warren	3,062	7
Virginia	Washington	1,942	5
Virginia	Westmoreland	1,613	5

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Virginia	Wise	1,893	5
Virginia	Wythe	1,726	5
Virginia	York	39,100	11
Washington	Adams	596	3
Washington	Asotin	408	2
Washington	Benton	1,361	4
Washington	Chelan	5,250	8
Washington	Clallam	8,840	8
Washington	Clark	8,009	8
Washington	Columbia	566	3
Washington	Cowlitz	4,094	7
Washington	Douglas	644	3
Washington	Ferry	314	2
Washington	Franklin	1,158	4
Washington	Garfield	423	2
Washington	Grant	1,538	5
Washington	Grays Harbor	1,854	5
Washington	Island	7,574	8
Washington	Jefferson	4,353	7
Washington	King	17,070	9
Washington	Kitsap	10,295	9
Washington	Kittitas	2,162	6
Washington	Klickitat	726	3
Washington	Lewis	2,418	6
Washington	Lincoln	485	2
Washington	Mason	3,966	7
Washington	Okanogan	674	3
Washington	Pacific	1,661	5
Washington	Pend Oreille	1,467	4
Washington	Pierce	7,724	8
Washington	San Juan	5,046	8
Washington	Skagit	4,090	7
Washington	Skamania	3,653	7
Washington	Snohomish	7,723	8
Washington	Spokane	1,691	5
Washington	Stevens	936	3
Washington	Thurston	6,766	8
Washington	Wahkiakum	2,152	6
Washington	Walla Walla	1,064	4
Washington	Whatcom	4,767	7
Washington	Whitman	687	3
Washington	Yakima	1,017	4
West Virginia	Barbour	818	3
West Virginia	Berkeley	2,578	6
West Virginia	Boone	866	3
West Virginia	Braxton	677	3
West Virginia	Brooke	965	3
West Virginia	Cabell	1,056	4
West Virginia	Calhoun	582	3
West Virginia	Clay	883	3
West Virginia	Doddridge	664	3
West Virginia	Fayette	1,054	4
West Virginia	Gilmer	634	3
West Virginia	Grant	1,310	4
West Virginia	Greenbrier	1,192	4
West Virginia	Hampshire	1,299	4
West Virginia	Hancock	1,898	5
West Virginia	Hardy	1,379	4
West Virginia	Harrison	998	3
West Virginia	Jackson	1,011	4
West Virginia	Jefferson	2,370	6
West Virginia	Kanawha	1,129	4
West Virginia	Lewis	855	3
West Virginia	Lincoln	878	3
West Virginia	Logan	1,533	5
West Virginia	Marion	1,170	4
West Virginia	Marshall	760	3
West Virginia	Mason	1,021	4
West Virginia	McDowell	721	3
West Virginia	Mercer	1,131	4
West Virginia	Mineral	1,042	4

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
West Virginia	Mingo	662	3
West Virginia	Monongalia	1,101	4
West Virginia	Monroe	1,086	4
West Virginia	Morgan	1,859	5
West Virginia	Nicholas	1,157	4
West Virginia	Ohio	978	3
West Virginia	Pendleton	934	3
West Virginia	Pleasants	846	3
West Virginia	Pocahontas	895	3
West Virginia	Preston	1,132	4
West Virginia	Putnam	1,411	4
West Virginia	Raleigh	1,097	4
West Virginia	Randolph	826	3
West Virginia	Ritchie	725	3
West Virginia	Roane	677	3
West Virginia	Summers	950	3
West Virginia	Taylor	1,094	4
West Virginia	Tucker	791	3
West Virginia	Tyler	744	3
West Virginia	Upshur	838	3
West Virginia	Wayne	838	3
West Virginia	Webster	879	3
West Virginia	Wetzel	646	3
West Virginia	Wirt	931	3
West Virginia	Wood	1,008	4
West Virginia	Wyoming	955	3
Wisconsin	Adams	1,704	5
Wisconsin	Ashland	903	3
Wisconsin	Barron	1,303	4
Wisconsin	Bayfield	849	3
Wisconsin	Brown	2,354	6
Wisconsin	Buffalo	1,201	4
Wisconsin	Burnett	1,478	4
Wisconsin	Calumet	2,199	6
Wisconsin	Chippewa	1,222	4
Wisconsin	Clark	1,194	4
Wisconsin	Columbia	2,020	6
Wisconsin	Crawford	1,390	4
Wisconsin	Dane	2,611	6
Wisconsin	Dodge	1,968	5
Wisconsin	Door	1,706	5
Wisconsin	Douglas	1,001	3
Wisconsin	Dunn	1,470	4
Wisconsin	Eau Claire	1,426	4
Wisconsin	Florence	1,012	4
Wisconsin	Fond du Lac	1,881	5
Wisconsin	Forest	1,136	4
Wisconsin	Grant	1,540	5
Wisconsin	Green	1,817	5
Wisconsin	Green Lake	1,585	5
Wisconsin	Iowa	1,794	5
Wisconsin	Iron	870	3
Wisconsin	Jackson	1,282	4
Wisconsin	Jefferson	2,470	6
Wisconsin	Juneau	1,496	4
Wisconsin	Kenosha	3,610	7
Wisconsin	Kewaunee	2,018	6
Wisconsin	La Crosse	1,550	5
Wisconsin	Lafayette	1,690	5
Wisconsin	Langlade	1,374	4
Wisconsin	Lincoln	1,253	4
Wisconsin	Manitowoc	2,246	6
Wisconsin	Marathon	1,477	4
Wisconsin	Marinette	1,364	4
Wisconsin	Marquette	1,711	5
Wisconsin	Menominee	572	3
Wisconsin	Milwaukee	5,134	8
Wisconsin	Monroe	1,528	5
Wisconsin	Oconto	1,609	5
Wisconsin	Oneida	1,654	5
Wisconsin	Outagamie	2,533	6

ADJUSTED 2002 PER ACRE LAND AND BUILDING (L/B) VALUE AND RENT SCHEDULE ZONE—Continued

State	County	80%—2002 L/B values	Rent schedule zone
Wisconsin	Ozaukee	3,234	7
Wisconsin	Pepin	1,478	4
Wisconsin	Pierce	1,856	5
Wisconsin	Polk	1,720	5
Wisconsin	Portage	2,408	6
Wisconsin	Price	1,134	4
Wisconsin	Racine	3,420	7
Wisconsin	Richland	1,746	5
Wisconsin	Rock	2,762	6
Wisconsin	Rusk	1,534	5
Wisconsin	Sauk	2,170	6
Wisconsin	Sawyer	1,589	5
Wisconsin	Shawano	2,010	6
Wisconsin	Sheboygan	2,362	6
Wisconsin	St. Croix	2,583	6
Wisconsin	Taylor	1,072	4
Wisconsin	Trempealeau	1,435	4
Wisconsin	Vernon	1,414	4
Wisconsin	Vilas	2,525	6
Wisconsin	Walworth	3,127	7
Wisconsin	Washburn	1,393	4
Wisconsin	Washington	3,241	7
Wisconsin	Waukesha	3,788	7
Wisconsin	Waupaca	1,721	5
Wisconsin	Waushara	2,071	6
Wisconsin	Winnebago	2,015	6
Wisconsin	Wood	1,460	4
Wyoming	Albany	182	1
Wyoming	Big Horn	574	3
Wyoming	Campbell	142	1
Wyoming	Carbon	171	1
Wyoming	Converse	123	1
Wyoming	Crook	288	2
Wyoming	Fremont	249	1
Wyoming	Goshen	330	2
Wyoming	Hot Springs	130	1
Wyoming	Johnson	216	1
Wyoming	Laramie	244	1
Wyoming	Lincoln	725	3
Wyoming	Natrona	150	1
Wyoming	Niobrara	210	1
Wyoming	Park	541	3
Wyoming	Platte	268	2
Wyoming	Sheridan	365	2
Wyoming	Sublette	586	3
Wyoming	Sweetwater	78	1
Wyoming	Teton	2,446	6
Wyoming	Uinta	298	2
Wyoming	Washakie	311	2
Wyoming	Weston	174	1

* State-average Land and Building value used where no county-specific value is available.

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Federal Register

Friday,
October 31, 2008

Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 781 Through 786
Additional Protocol Regulations; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII, Subchapter D, Parts 781 Through 786

[Docket No. 080212165–81300–02]

RIN 0694–AD26

Additional Protocol Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States of America (the ''Additional Protocol''). The Additional Protocol is an agreement between the United States and the IAEA to allow monitoring and reporting of certain civil nuclear fuel cycle-related activities.

The Department of Commerce's Bureau of Industry and Security (BIS) is establishing these Additional Protocol Regulations (APR) to implement the provisions of the Additional Protocol affecting U.S. industry and other U.S. persons engaged in certain civil nuclear fuel cycle-related activities, which are not regulated by the U.S. Nuclear Regulatory Commission (NRC) or its domestic Agreement States, and are not located on certain U.S. government locations. The APR describe the requirement to report such activities to BIS, the scope and conduct of IAEA complementary access to locations at which such civil nuclear fuel cycle-related activities take place, and the role of BIS in implementing the Additional Protocol in the United States. The impact of the APR on U.S. industry and other U.S. persons involves the submission of initial reports, annual update reports, and other reporting requirements, as well as on-site activities in conjunction with complementary access. Other U.S. Government agencies issuing regulations to implement other provisions of the Additional Protocol include the Nuclear Regulatory Commission, the Department of Energy, and the Department of Defense. On July 25, 2008, BIS published a proposed rule that requested comments on the proposed establishment of the APR. BIS received comments from one respondent and has reviewed these comments and considered them in its preparation of this final rule.

DATES: This rule is effective October 31, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AD26, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: publiccomments@bis.doc.gov.* Include ''RIN 0694–AD26'' in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AD26.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on reports and complementary access, contact Jill Shepherd, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, telephone: (202) 482–1001. For legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

I. Origins and Overview of the Additional Protocol

The requirement for a comprehensive international safeguards system to prevent the spread of nuclear weapons was first established by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The NPT was signed by the United States on July 1, 1968, and entered into force on March 5, 1970. The treaty banned nuclear weapon states (NWS) from transferring nuclear weapons to non-nuclear weapon states (NNWS) or assisting NNWS in acquiring such weapons. It also banned NNWS from manufacturing or acquiring nuclear weapons and stipulated that each NNWS Party to the NPT would undertake to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency (IAEA), which serves as the official international verification authority for the implementation of safeguards agreements concluded pursuant to the NPT. Although NWS, including the United States, are not obligated under the NPT to accept IAEA safeguards, all have voluntarily offered to accept safeguards on certain activities to encourage NNWS to meet their obligations. The IAEA completed formulation of detailed provisions for a model NPT Safeguards Agreement in 1971. The safeguards system, as embodied in the comprehensive safeguards agreements concluded between the IAEA and individual NNWS States Parties to the NPT, consists of nuclear material accountancy and nuclear material verification measures by which the IAEA independently verifies declarations made by individual States Parties about their nuclear material and activities to ensure that nuclear material inventories and flows have been accurately declared and are not being used to further any proscribed purpose.

During deliberations on the NPT, several major industrialized nations expressed concern that the absence of requirements for IAEA safeguards in NWS would place NNWS at a commercial and industrial disadvantage in developing nuclear energy for peaceful purposes. Specifically, the NNWS were concerned that application of safeguards would interfere with the efficient operations of their commercial activities and would possibly compromise industrial and trade secrets as a result of access by IAEA inspectors to their facilities and records. In order to allay these concerns, the United States voluntarily offered in 1967 to permit the IAEA to apply safeguards to civil nuclear facilities in the United States. The U.S. ''Voluntary Offer'' is set forth in the ''Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America'' (also known as the ''U.S.–IAEA Safeguards Agreement''). Since then, the other four NWS recognized under the NPT (China, France, the Russian Federation, and the United Kingdom) also agreed to make all or part of their civil nuclear activities eligible for IAEA safeguards.

The U.S.–IAEA Safeguards Agreement was signed on November 18, 1977, and entered into force on December 9, 1980. At that time, the United States submitted to the IAEA a list of more than 200 eligible facilities for which safeguards could be applied if selected by the IAEA. This list included facilities licensed by the U.S. Nuclear Regulatory Commission (NRC), as well as eligible Department of Energy facilities. The United States has added additional facilities to the eligible facilities list

since that time. Under the U.S.–IAEA Safeguards Agreement, approximately eighteen facilities have been selected for safeguards inspection and/or monitoring since 1981.

Although the U.S.–IAEA Safeguards Agreement is based on the model safeguards agreement developed by the IAEA, the terms of the U.S.–IAEA Safeguards Agreement and the obligations of NNWS parties to the NPT differ in several respects. First, the U.S.–IAEA Safeguards Agreement excludes nuclear facilities associated with activities of direct national security significance. Second, the United States decides which civil nuclear facilities are eligible for the full program of safeguards procedures (including routine inspections) and the IAEA decides which eligible facilities will be selected for the application of safeguards, although the IAEA need not select any. Finally, the United States has made separate commitments to provide to the IAEA, for safeguards purposes, information on exports of nuclear material and nuclear-related equipment and materials.

In the aftermath of the 1991 Persian Gulf War, the IAEA determined that Iraq had been engaged in a clandestine nuclear weapons development program at locations not directly subject to routine IAEA safeguards inspections. The international community determined that the safeguards system needed to be strengthened, and negotiated a Model Additional Protocol to amend existing bilateral safeguards agreements (i.e., the ''Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards,'' INFCIRC/540 (Corrected) September 1997). The Model Additional Protocol requires enhanced information collection and access to sites and other locations involved in nuclear fuel-cycle related activities and covers almost all of a state's nuclear fuel cycle, thereby providing IAEA inspectors with greater ability to detect clandestine nuclear activities in NNWS facilities, sites, and locations that are involved in nuclear fuel cycle activities. In an effort to encourage adoption of the Additional Protocol among NNWS, the United States signed the Additional Protocol on June 12, 1998. In the Additional Protocol, the United States accepts all of the measures of the Model Additional Protocol, except where their application would result in access by the IAEA to activities of direct national security significance to the United States or to locations or information associated with such activities. By subjecting itself to the same safeguards on all of its civil nuclear activities that NNWS are subject to (with the exception of those activities of direct national security significance), the United States intends to encourage widespread adherence to the Model Additional Protocol and demonstrate that adherence does not place other countries at a commercial disadvantage.

The Additional Protocol will enter into force when the United States notifies the IAEA that the statutory and constitutional requirements for entry into force have been met. These requirements include: (1) Ratification, to which the Senate provided advice and consent with certain conditions and understandings on March 31, 2004; (2) enactment of implementing legislation, which was signed by the President on December 18, 2006 (The U.S. Additional Protocol Implementation Act of 2006 (Pub. L. 109–401, 120 Stat. 2726 (2006)); (3) issuance of an Executive Order, which was issued as Executive Order 13458 of February 4, 2008 (73 FR 7181, February 6, 2008); (4) issuance of agency regulations by the Departments of Commerce, Defense, and Energy, and by the Nuclear Regulatory Commission (DOC, DOD, DOE, and NRC); and (5) certification by the President that certain Senate conditions have been met. The United States' instrument of ratification may be deposited with the IAEA only after the President has certified that two Senate conditions, which address the application of the national security exclusion in Articles 1.b and 1.c of the Additional Protocol (i.e., managed access, security and counter-intelligence training, and preparation at locations of direct national security significance) and the completion of site vulnerability assessments concerning activities, locations, and information of direct national security significance, will be met within 180 days after deposit of the United States' instrument of ratification.

The Additional Protocol consists of the following articles and annexes:

Article 1: Relationship between the Additional Protocol and the U.S.–IAEA Safeguards Agreement
Articles 2 and 3: Provision of information
Articles 4 through 10: Complementary access
Article 11: Designation of IAEA inspectors
Article 12: Visas
Article 13: Subsidiary arrangements
Article 14: Communications systems
Article 15: Protection of confidential information
Article 16: Annexes
Article 17: Entry into force
Article 18: Definitions
Annex I: List of activities referred to in the Additional Protocol
Annex II: List of specified equipment and non-nuclear material for reporting of exports and imports.

The Additional Protocol requires the United States to declare to the IAEA a number of nuclear fuel cycle-related items, materials, and activities that may be used for peaceful nuclear purposes, but that also could be necessary elements for a nuclear weapons program. In order to obtain the information necessary to complete the U.S. declaration to the IAEA, the U.S. Government must collect reports from U.S. industry and other U.S. persons. U.S. declarations submitted under the Additional Protocol will provide the IAEA with information about additional aspects of the U.S. civil nuclear fuel cycle, including: mining and concentration of nuclear ores; nuclear-related equipment manufacturing, assembly, or construction; imports, exports, and other activities involving certain source material (i.e., source material that has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched); imports and exports of specified nuclear equipment and non-nuclear material; nuclear fuel cycle-related research and development activities not involving nuclear material; and other activities involving nuclear material not currently subject to the U.S.–IAEA Safeguards Agreement.

Within 180 days after deposit of the United States' instrument of ratification of the Additional Protocol, the United States must submit to the IAEA a declaration containing information compiled from the *Initial Reports* submitted to BIS in accordance with the requirements of section 783.1(a) of the APR. Thereafter, by May 15th of each succeeding year, the United States must submit to the IAEA a declaration containing an annual update to the information contained in previous U.S. declarations to the IAEA. The U.S. annual declaration to the IAEA will contain information compiled, for the most part, from the *Annual Update Reports* submitted to BIS in accordance with the requirements of section 783.1(b) of the APR.

The Additional Protocol provides that there shall be no mechanistic or systematic verification of information contained in the U.S. declaration (e.g., there is no provision for routine inspections). However, the United States is required to provide the IAEA with access (referred to as ''complementary access'') to civil nuclear fuel cycle-related locations and activities, under certain circumstances, as defined in the Additional Protocol. Such access is designed to ensure the absence of undeclared nuclear material and activities at declared sites where nuclear facilities or materials are located

or to address a question about the completeness or correctness of the U.S. declaration or an inconsistency related to the information contained therein. In the latter instance, access generally will be requested only if a question or inconsistency in the U.S. declaration cannot be resolved through consultation between the United States and the IAEA. The APR contain requirements administered by the Department of Commerce's Bureau of Industry and Security to implement the Additional Protocol. Additional U.S. obligations under the Additional Protocol are administered by other U.S. government agencies as designated by the President of the United States.

A. Part 781—General Information and Overview of the APR

The Additional Protocol Regulations (15 CFR chapter VII, subchapter D), or APR, implement certain obligations of the United States under the Additional Protocol. Part 781 contains definitions of terms used in the APR, describes the purpose and scope of the APR, and provides an overview of the activities regulated under the APR.

B. Part 782—General Information Regarding Reporting Requirements and Procedures

The Additional Protocol augments the existing U.S.–IAEA Safeguards Agreement by requiring the United States to provide the IAEA with information on civil nuclear and nuclear-related items, materials, and activities not presently covered by the U.S.–IAEA Safeguards Agreement. The items, materials, and activities that must be declared include the following: Mining and milling activities involving the production or processing of materials that could serve as feed material for the civil nuclear fuel cycle (i.e., uranium and thorium); nuclear-related equipment manufacturing; exports and imports of nuclear-related equipment and nuclear-related non-nuclear material; and civil nuclear fuel cycle-related research and development (R&D) activities not involving nuclear material. To enable the United States to collect the information necessary to prepare the U.S. declaration to the IAEA, BIS is publishing the APR to establish reporting requirements for U.S. industry and other U.S. persons concerning civil nuclear and nuclear-related items, materials, and activities that must be declared under the Additional Protocol.

Part 782 of the APR contains a brief overview of the reporting and compliance review requirements in the APR, identifies who is responsible for submitting the reports required under the APR, and provides information on how to determine which activities are subject to the APR reporting requirements, including instructions on where and how to submit activity determination requests to BIS. Part 782 also explains how to obtain the forms needed to submit reports required by the APR and where to submit the reports.

C. Part 783—Reporting Requirements for Nuclear Fuel Cycle-Related Activities Not Involving Nuclear Materials

Part 783 contains a comprehensive description of the reporting requirements under the APR, including which activities must be reported, who must submit reports, the types of reports that must be submitted (e.g., *Initial Report, Annual Update Report, Import Confirmation Report, Supplemental Information Report*—the latter will be submitted in response to BIS notification of an IAEA request for amplification or clarification of information), the types of changes that will require the submission of an *Amended Report* to BIS, when a *No Changes Report* may be submitted in lieu of an *Annual Update Report,* the APR forms required and the procedures that must be followed to prepare and submit these reports, and the deadlines for submitting these reports to BIS.

Section 783.1(a) of the APR establishes initial reporting requirements under the APR. You must submit an *Initial Report* to BIS, no later than December 1, 2008, if you are engaged in any of the civil nuclear fuel cycle-related activities described in section 783.1(a) of the APR on October 31, 2008. In this instance, your *Initial Report* must describe only those activities in which you are engaged as of October 31, 2008, except that the description of activities involving uranium hard-rock mines must include any such mines that were closed down during calendar year 2008 (up to and including October 31, 2008 as well as mines that were in either operating or suspended status on October 31, 2008. The period of time covered by your *Initial Report* must include calendar year 2008 (up to and including October 31, 2008).

For any calendar year that follows calendar year 2008, you must submit an *Initial Report* to BIS if you commenced civil nuclear fuel cycle-related activities described in section 783.1(a) of the APR at your location, during the previous calendar year, and have not previously reported such activities to BIS. You may include such activities in your *Annual Update Report,* in lieu of submitting a separate *Initial Report,* if you also have an *Annual Update Report* requirement for the same location that covers the same reporting period (*Annual Update Report* requirements are addressed in the discussion of section 783.1(b), below).

Section 783.1(a)(1) of the APR contains two separate reporting requirements that apply to civil nuclear fuel cycle-related research and development activities, as defined in section 781.1 of the APR, that do not involve nuclear material. Section 783.1(a)(1)(i) of the APR describes the initial reporting requirement for any such civil activities that were funded, specifically authorized or controlled by, or carried out on behalf of, the United States. Section 783.1(a)(1)(ii) of the APR describes the initial reporting requirement for any such activities that were specifically related to civil enrichment, reprocessing of nuclear fuel, or the processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 and that were not funded, specifically authorized or controlled by, or carried out on behalf of the United States. Reports on these activities must include a general activity description and location information. The provisions of section 783.1(a)(1)(i) and (a)(1)(ii) are intended to address the information requirements described in Articles 2.a(i) and 2.b(i), respectively, of the Additional Protocol.

Section 783.1(a)(2) of the APR describes the initial reporting requirement for civil nuclear-related manufacturing, assembly, and construction activities (e.g., the manufacture of centrifuge rotor tubes, diffusion barriers, zirconium tubes, nuclear grade graphite, and reactor control rods). The specific activities subject to this APR reporting requirement are listed in detail in Supplement No. 2 to Part 783 of the APR, which corresponds to Annex I of the Additional Protocol. For these locations, the APR require a description of the scale of operations for each location engaged in any of the activities described in Supplement No. 2 to Part 783. This information need not be detailed, but should include the organization's name, location, a brief description of operations, and the estimated current annual production. The provisions of section 783.1(a)(2) are intended to address the information requirements described in Article 2.a(iv) of the Additional Protocol.

Section 783.1(a)(3) of the APR describes the initial reporting requirement for U.S. uranium hard-rock mining activities, consistent with

information requirements described in Article 2.a(v) of the Additional Protocol. Uranium hard-rock mines are required to report to BIS their location, operational status, estimated annual production capacity, and current annual production. For *Initial Reports* submitted during calendar year 2008, this reporting requirement applies to any mines that were closed down during that calendar year (up to and including October 31, 2008), as well as mines in either operating or suspended status on October 31, 2008. Mines that were closed down prior to calendar year 2008 do not have a reporting obligation.

Section 783.1(b) of the APR establishes annual reporting requirements under the APR. If you submit an *Initial Report* to BIS, in accordance with Section 783.1(a) of the APR, and your *Initial Report* does not indicate that all civil nuclear fuel cycle-related activities described therein have ceased at your location, section 783.1(b) of the APR requires that you submit an *Annual Update Report* to BIS for each calendar year that follows the year covered by your *Initial Report*. This *Annual Update Report* requirement will continue to apply for as long as you engage in activities subject to the APR reporting requirements. If your location subsequently ceases to engage in activities subject to the APR reporting requirements, you will still be required to submit an *Annual Update Report* covering the calendar year in which you ceased to engage in such activities. Section 783.1(b)(2) of the APR provides that a *No Changes Report* may be submitted, in lieu of an *Annual Update Report,* when there are no changes with respect to your location and civil nuclear fuel cycle-related activities during the previous calendar year. If your *Initial Report* or most recent *Annual Update Report* indicates that all civil nuclear fuel cycle-related activities described therein have ceased at your location, and no other reportable activities have occurred during the previous calendar year, then you will not have a reporting requirement under Section 783.1(a) or (b) of the APR.

Initial Reports describing reportable civil nuclear fuel cycle-related activities identified in Section 783.1(a) of the APR must be submitted to BIS no later than December 1, 2008, if you are engaged in any such civil nuclear fuel cycle-related activities on October 31, 2008. Any such activities that commence after October 31, 2008 must be reported to BIS no later than January 31 of the year following the calendar year in which the activities took place. If you are subject to an *Annual Update Report* requirement for the same location and covering the same reporting period, you may include these additional activities in your *Annual Update Report,* in lieu of submitting a separate *Initial Report. Annual Update Reports* must be submitted to BIS by January 31st of the year following any calendar year in which reportable fuel cycle-related activities took place. *No Changes Reports* must be submitted to BIS by January 31st of the year following any calendar year in which reportable nuclear fuel cycle-related activities took place.

Section 783.1(c) of the APR describes the reporting requirements that apply to imports of equipment or non-nuclear material identified in Supplement No. 3 to Part 783 of the APR. The equipment and non-nuclear material in Supplement No. 3 are derived from the Nuclear Suppliers Group (NSG) Trigger List (IAEA INFCIRC/254/Rev.8/Part 1, Annex B). This List is included in Annex II of the Additional Protocol and consists of material, equipment, and technology that is specially designed or prepared for the processing, use, or production of special nuclear material. You will be notified by BIS if an *Import Confirmation Report* is required under the APR. BIS will provide such notification only upon receipt of a request from the IAEA for information to verify imports. For each import of equipment or non-nuclear material listed in Supplement No. 3 to Part 783, you must submit an *Import Confirmation Report* to BIS no later than 30 calendar days following the date that you receive notification of this requirement. The provisions of section 783.1(c) are intended to address the information requirements described in Article 2.a(ix)(b) of the Additional Protocol.

Section 783.1(d) of the APR describes the requirements that apply to a *Supplemental Information Report.* If the IAEA specifically requests amplification or clarification concerning any information provided in the U.S. declaration that is based on your report(s), BIS will send you written notification requiring that you report to BIS additional information concerning the activities that you previously reported and any other activities conducted at your location or building that would be relevant for the purpose of addressing the IAEA's request for amplification or clarification of information.

Section 783.2 of the APR describes the circumstances under which an *Amended Report* must be submitted to BIS. Section 783.2(a) of the APR requires that an *Amended Report* be submitted to BIS no later than 30 calendar days following the date that you discover an error or omission in your most recent report that involves information concerning an activity subject to the reporting requirements in section 783.1(a) or (b) of the APR. Section 783.2(b) of the APR requires that an *Amended Report* be submitted to BIS no later than 30 calendar days after any changes to company and location information, such as the company's designated contact person (for reporting and complementary access purposes), the name or mailing address of the company, the owner/operator of the location, or the owner of the company. Section 783.2(d) of the APR requires that an *Amended Report* be submitted to BIS no later than 30 calendar days following the date that you received written notification from BIS to provide information requested by the IAEA following complementary access to the location.

D. Part 784—Complementary Access

Part 784 of the APR describes the purpose of complementary access by the IAEA and identifies the types of locations that may be subject to complementary access under the APR. Any location that is required to submit an *Initial Report, Annual Update Report,* or *No Changes Report* to BIS, pursuant to Part 783 of the APR, is a reportable location and may be subject to complementary access by the IAEA. The fact that a location is required to submit a report to BIS does not automatically trigger complementary access by the IAEA, although it may provide the basis for complementary access. Information that has been reported to BIS and included in the U.S. declaration will be analyzed by the IAEA before the IAEA makes a decision on whether or not to request complementary access to a particular location. In addition to providing the IAEA with complementary access to reportable locations, Part 784 of the APR provides that other locations specified by the IAEA may be subject to complementary access.

The specific purpose of complementary access is location dependent. In the case of uranium hard-rock mine locations, the purpose of complementary access is limited to enabling the IAEA to verify, on a selective basis, the absence of undeclared nuclear material and nuclear related activities. For all other locations subject to the APR (e.g., locations involved in reportable civil nuclear fuel cycle-related research and development or manufacturing activities, other locations specified by the IAEA), the purpose of complementary access is

limited to allowing the IAEA to resolve questions relating to the correctness and completeness of the information provided in the U.S. declaration or to resolve inconsistencies relating to that information. Complementary access normally will not be scheduled for the latter type of location until after the IAEA has provided the United States with an opportunity to clarify or resolve the question or inconsistency in the U.S. declaration.

Part 784 of the APR defines the role of BIS in notifying locations that will be subject to complementary access and acting as host to the IAEA Team during complementary access. A BIS Host team (augmented by other agency representatives, as appropriate) will accompany the IAEA inspectors during their activities at the location. In addition, a BIS Advance Team, upon receiving advance notice from the IAEA of complementary access, may deploy to the location to assist in preparing personnel and implementing appropriate measures to protect confidential business and other critical information.

Part 784 also provides specific information on the scope and conduct of complementary access, such as the kinds of activities that may be carried out by the IAEA Team (e.g., the circumstances under which the IAEA Team will be granted physical access to records and visual access to facilities). In addition, Part 784 describes the circumstances under which the Host Team will implement managed access measures during IAEA complementary access. Managed access will protect activities of direct national security significance to the United States, as well as locations or information associated with such activities. It is also designed to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, and to protect proprietary or commercially sensitive information.

E. Part 785—Enforcement

Part 785 contains definitions of enforcement-related terms and describes the scope of the enforcement activities that are authorized under the APR, including the types of violations subject to the APR, administrative and criminal proceedings, hearings, representation, paperwork, summary decisions, discovery, subpoenas, matters protected against disclosure, procedural stipulations, extensions, post-hearing submissions, decisions, settlements, payment of assessments, and how to report a violation.

F. Part 786—Records and Recordkeeping

Part 786 describes the APR recordkeeping requirements, including the types of records that must be retained, required retention periods, acceptable media for record storage, records inspection procedures, accessibility of records, and disposal of records.

G. Part 787—Interpretations

Part 787 is reserved for future interpretations of Parts 781 through 786 of the APR and also for Subsidiary Arrangements to the Additional Protocol.

II. Summary of Public Comments on the July 25, 2008, APR Proposed Rule

One respondent submitted comments in response to the APR proposed rule that the Bureau of Industry and Security (BIS) published in the **Federal Register** July 25, 2008. Following is a summary of these comments, along with BIS's responses.

A. Section 783.1—Export Report and Import Confirmation Report

Comment: The respondent is concerned that the reporting requirement in the APR proposed rule that applies to exports and certain imports of items listed in Supplement No. 3 to Part 783 of the APR would result in the disclosure of sensitive information (e.g., such reports may require that the internal components of enrichment equipment be disclosed).

Response: The reporting of exports of items that are listed in Supplement No. 3 to Part 783 of the APR is subject to the regulatory authority of the Nuclear Regulatory Commission (NRC). Such items must be reported in accordance with the requirements specified by the NRC in a final rule that will address AP-related requirements involving the NRC's licensees. The NRC rule will provide a list of categories under which these items must be reported (i.e., a list of categories that will conform with those specified in Supplement No. 3 to Part 783 of the APR). The NRC should be contacted if assistance is needed to determine which (if any) of these categories would be appropriate for a specific item.

Furthermore, to avoid possible confusion concerning which agency (i.e., BIS or the NRC) has regulatory authority over exports that must be declared under the AP, section 783.1 of the APR final rule, as promulgated by BIS, has excluded export reporting requirements for items identified under Supplement No. 3 to Part 783—these reporting requirements were described under section 783.1(c) of the APR proposed rule. Instead, all exports of these items will be reported in accordance with the requirements to be specified in the NRC's final rule. Although this export reporting requirement will be administered by the NRC, rather than BIS, the NRC final rule is expected to require that all such reports be submitted to BIS for processing purposes only. BIS will conduct no substantive review of those reports.

Finally, information on imports of items listed in Supplement No. 3 to Part 783 of the APR must be provided to BIS only upon receipt of a specific request from the IAEA. Specifically, section 783.1(c) of the APR final rule (previously, section 783.1(d) in the APR proposed rule) provides that an *Import Confirmation Report* must be submitted to BIS only if BIS provides prior written notification to the owner/operator of a location. BIS will provide such notification when it receives a request from the IAEA for information concerning imports of items specified in Supplement No. 3.

B. Part 784—Complementary Access

Comment: The respondent is concerned that the APR proposed rule does not provide a clear standard for determining what constitutes confidential business and other critical information, for purposes of complementary access, and does not indicate who should make this determination. As a remedy, the respondent recommends that the APR provide the operator of a location or site with the opportunity to identify such information.

Response: The determination of what information constitutes proprietary or confidential business information for the purpose of complementary access to a location in accordance with the requirements of the APR is, in the first instance, the responsibility of the owner/operator of the location. The complementary access provisions in Part 784 of the APR describe a number of measures that give the owner/operator of the location an opportunity to provide input on this question.

First, section 784.1(d)(4) of the APR provides for the dispatch of an advance team, if time and circumstances permit, to provide administrative and logistical support for complementary access and to assist with the preparation for such access—this service will provide an opportunity for the advance team and the owner/operator of the location to discuss various means to ensure the protection of proprietary or confidential

business information, as well as ITAR-controlled technology.

Second, section 784.3(b)(iv) of the APR specifically protects personal, proprietary, and business confidential records from disclosure, except where the Host Team leader, after receiving input from the representatives of the location and consulting with other members of the Host Team, determines that access to certain of these records is both ''appropriate and necessary to achieve the relevant purposes of complementary access,'' as described in section 784.1(b)(1) or (b)(2) of the APR.

Third, section 784.3(d) of the APR provides that visual access by the IAEA Team to areas or parts of the location will be allowed, as agreed by the Host Team Leader, after the Host Team Leader has consulted with the organization's representative (e.g., the owner/operator of the location).

Additional measures to protect proprietary or business confidential information from disclosure are provided in section 784.3(f) of the APR, which describes the implementation of managed access measures (more details on the latter are provided in response to the following comment).

C. Section 781.1—Definitions of Terms Used in the Additional Protocol Regulations (APR)

Comment: The respondent is concerned that, while the APR proposed rule defines ''managed access,'' it does not provide guidance on how managed access will be implemented, which may have the unintended consequence of compromising proprietary or commercially sensitive information during complementary access at a location or site.

Response: The BIS Host Team will be responsible for implementing managed access procedures (e.g., the removal of sensitive papers from office spaces and the shrouding of sensitive displays, stores, and equipment) at those locations where it has lead agency authority in the event of complementary access. These procedures can and will vary, based upon the specific circumstances that exist at each location. The expectation is that in instances where BIS has lead agency authority during complementary access, BIS will work with each location to identify what needs to be protected and to devise a plan appropriate to the circumstances on the ground at that location. The APR do not require locations to develop a managed access plan in advance of notification of complementary access. In contrast to locations that are subject to the APR, sites that have been selected for IAEA safeguards (e.g., DOE or NRC licensed facilities) are required to have a managed access or security plan in place at all times. Such sites are much more likely to have long-term, standardized managed access procedures in place, than are locations subject to the APR. Since the respondent indicates that their site falls under the jurisdiction of the NRC, rather than BIS, they should seek guidance from the NRC regarding the use of managed access at their facility.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required 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 (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule revises an existing collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This collection has been approved by OMB under Control Number 0694–0135 (October 2008). The information collection contained in this final rule is part of a joint information collection by the Bureau of Industry and Security (BIS) of the Department of Commerce (DOC), in accordance with the Additional Protocol Regulations (APR) (15 CFR Parts 781–786), and the Nuclear Regulatory Commission (NRC), in accordance with amendments to its regulations in 10 CFR Part 75 and 10 CFR Part 110. A total of approximately 156 respondents are subject to the information collection requirements set forth in these BIS and NRC rules. These information collection requirements involve an estimated 3,357 total burden hours per annum at a total estimated cost of $139,142 per annum. The estimated total burden hours per annum include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285, and to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

The DOC's Office of Strategic Industries and Economic Security (SIES) conducted a study in order to obtain an estimate of the number of U.S. companies, organizations, and other U.S. persons that would be subject to reporting requirements under the BIS and NRC rules. This study, along with reviews conducted by the NRC on activities conducted by its licensees, indicated that potentially 119 locations and 10 sites at International Atomic Energy Agency (IAEA) Selected Facilities from the U.S. Eligible Facilities List licensed by the NRC (an estimated total of 129 respondents) will have reporting requirements pursuant to DOC and NRC regulations under the Additional Protocol.

The information collection requirements in the BIS and/or NRC rules consist of the following activities: (1) Additional Protocol (AP)-related reporting activities (e.g., activities involving the completion and submission of AP-related reports using forms contained in handbooks described below), (2) complementary access activities (e.g., activities involving IAEA inspection team access to locations and sites subject to AP-related reporting requirements), and (3) compliance review activities (e.g., activities involving BIS requests for information from persons and locations subject to the APR to determine compliance with APR reporting and recordkeeping requirements).

The estimated information collection burden associated with the AP-related reporting activities is expected to total 2,161 burden hours per year, at a total cost to respondents of $96,467 per annum, as follows: 2,161 burden hours × $37.20/hour (employee salaries) × 1.2 (20% overhead) = $96,467 estimated annual cost.

The estimated information collection burden associated with the complementary access activities is expected to total 1,153 burden hours per year, at a total cost to respondents of $32,070 per annum, as follows: First, 576.33 (burden hours per complementary access) × 2 (locations per calendar year) = 1,153 total burden

hours and, second, $16,035 (estimated cost per complementary access) × 2 (locations per calendar year) = $32,070 estimated annual cost.

The estimated information collection burden associated with the compliance review activities is expected to total 43 burden hours per year, at a total cost to respondents of $1,897 per annum, as follows: 25 requests × 1.7 hours = 42.5 burden hours × $37.20/hour (employee salaries) = $1,581 × 1.2 (20% overhead) = $1,897.20 annual estimated cost.

In addition, this final rule contains a recordkeeping requirement of 3 years, which involves a total estimated recordkeeping cost of $8,707.50 per annum, as follows: 1.5 square feet (average office space occupied by storage cabinet containing AP-related records) × $45/square foot (average cost of office space utilized for storage) × 129 reports (estimated number of locations required to submit AP-related reports) = $8,707.50 annual estimated cost.

Based on the estimates provided above, the annual burden hours for this information collection are expected to total 3,357 burden hours, as follows: 2,161 (estimated annual burden hours for AP-related reporting activities) + 1,153 (estimated annual burden hours for complementary access activities) + 43 (estimated annual burden hours for compliance review activities) = 3,357 total estimated annual burden hours for all AP-related information collection activities. (Note: The AP-related recordkeeping burden estimate is based upon cost of storage space rather than burden hours.)

Based on the estimates provided above, the annual cost of this information collection is expected to total $139,142, as follows: $96,467 (estimated annual cost for AP-related reporting activities) + $32,070 (estimated annual cost for complementary access activities) + $1,897.20 (estimated annual cost for compliance review activities) + $8,707.50 (estimated annual cost of AP-related recordkeeping requirements) = $139,142 total estimated annual cost for all AP-related information collection activities.

The AP requires the United States to declare to the IAEA a number of commercial nuclear and nuclear-related items, materials, and activities that may be used for peaceful nuclear purposes, but that also would be necessary elements for a nuclear weapons program. Executive Order (E.O.) 13458 of February 5, 2008, designates the DOC as the lead agency responsible for collecting data required under the AP from the commercial nuclear industry and other U.S. persons, except for data involving activities or locations subject to the licensing jurisdiction of the NRC. The E.O. designates the NRC as the lead agency responsible for collecting data required under the AP from those persons, locations, and sites subject to its licensing jurisdiction. In addition, National Security Policy Directive 57 (February 4, 2008) designated the DOC as the lead agency responsible for managing the collection and aggregation of all data reported to the U.S. Government for the purpose of preparing the U.S. AP declaration for submission to the IAEA.

BIS has developed two separate handbooks (one for locations and the other for sites of IAEA-selected facilities) that provide guidance on how to complete and submit the forms required under the APR. These handbooks identify the specific forms that must be included in each type of report package that must be submitted to BIS or the NRC. The specific forms in each handbook are identified below.

LIST OF FORMS CONTAINED IN REPORT HANDBOOK FOR LOCATIONS

Form	Description of information collected on form
AP–1	Certification.
AP–2	Contact Information.
AP–3	Research and Development with U.S. Government (USG) Involvement.
AP–4	Research and Development without U.S. Government Involvement.
AP–5	Nuclear-related manufacturing, assembly and construction activities.
AP–6	Information on uranium hard rock mines.
AP–7	Information on concentration plants.
AP–8	Holdings of impure source materials.
AP–9	Imports and exports of impure source materials.
AP–10	Holdings of safeguards-exempted materials.
AP–11	Location of safeguards-terminated materials.
AP–12	Processing of safeguards-terminated waste materials.
AP–13	Exports of specified equipment and non-nuclear material.
AP–14	Imports of specified equipment and non-nuclear material.
AP–15	Supplemental information report.
AP–16	Continuation.
AP–17	No Changes Report.

LIST OF FORMS CONTAINED IN REPORT HANDBOOK FOR SITES

Form	Description of information collected on form
AP–A	Certification.
AP–B	Contact Information.
AP–C	Building information.
AP–D	Research and Development with U.S. Government Involvement.
AP–E	Research and Development without U.S. Government Involvement
AP–F	Nuclear-related manufacturing, assembly and construction activities.
AP–G	Information on concentration plants.
AP–H	Holdings of impure source materials.
AP–I	Imports and exports of impure source materials.
AP–J	Holdings of safeguards-exempted materials.
AP–K	Location of safeguards-terminated materials.
AP–L	Processing of safeguards-terminated waste materials.
AP–M	Exports of specified equipment and non-nuclear material.

LIST OF FORMS CONTAINED IN REPORT HANDBOOK FOR SITES—Continued

Form	Description of information collected on form
AP–N	Imports of specified equipment and non-nuclear material.
AP–O	Supplemental information report.
AP–P	Continuation.
AP–Q	No Changes Report.

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

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this final rule will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards), (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. BIS has determined that this final rule will affect only the first and third categories of small entities (i.e., small businesses and small organizations).

The DOC's Office of Strategic Industries and Economic Security (SIES) conducted a study to obtain an estimate of the number of U.S. businesses, organizations, and other U.S. persons that would be subject to the information collection and recordkeeping requirements that BIS and the NRC would have to establish in order to meet U.S. obligations under the AP. This study, along with reviews conducted by the NRC on activities conducted by its licensees, indicated that potentially 119 locations and 10 sites at IAEA-Selected Facilities from the U.S. Eligible Facilities List licensed by the NRC (an estimated total of 129 respondents) would have reporting requirements pursuant to DOC and NRC regulations under the AP. The study indicated that the majority of the businesses or organizations most likely to be impacted by the entry-into-force of the AP would fall into the following categories: (1) Colleges and universities, (2) nuclear fuel manufacturers and utility companies, (3) mining and milling companies, and (4) corporate entities and contractors involved in research and development, manufacturing, assembly and construction activities. Although BIS estimates that the majority of these businesses and organizations are substantially sized entities, having more than 500 employees, BIS does not have sufficient information on these businesses and organizations to definitively characterize them as large entities.

The Small Business Administration (SBA) has established standards for what constitutes a small business, with respect to each of the Standard Industrial Classification (SIC) code categories. For example, a business in the uranium mining industry (NAICS Code: 212291, SIC Code: 1094), is considered by SBA to be a small business if it is independently owned and operated and not dominant in its field of operation and it employs 500 or fewer persons on a full-time basis, part-time, temporary, or other basis. The Mine Safety and Health Administration (MSHA) estimates that approximately 99.8% of the metal/non-metal mining industry would qualify as small businesses. However, many of the uranium mining and milling entities in the United States appear to be subsidiaries of large companies and BIS estimates that most of the small entities likely to be impacted by the entry-into-force of the AP will fall within the other categories of businesses and organizations identified in the SIES survey. In addition, BIS is not able to determine which SIC code categories apply to the other categories of businesses or organizations that are likely to be impacted by the entry-into-force of the AP. Therefore, for the purpose of assessing the impact of this final rule, BIS assumes that all of the 129 businesses and organizations likely to be affected are small entities.

Although this final rule will affect a substantial number of small entities (i.e., 129 businesses and organizations), the reporting, on-site verification (i.e., complementary access), compliance review, and recordkeeping requirements imposed by this rule will not have a significant economic impact on these entities.

First, this rule establishes reporting requirements in Part 783 of the APR that require U.S. industry and U.S. persons to submit data needed to prepare U.S. declarations to the IAEA in accordance with U.S. obligations under the AP. The U.S. declarations submitted under the AP will provide the IAEA with information about additional aspects of the U.S. civil nuclear fuel cycle, including the following: Mining and concentration of nuclear ores; nuclear-related equipment manufacturing, assembly, or construction; imports, exports, and other activities involving certain source material (i.e., source material that has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched); imports and exports of specified nuclear equipment and non-nuclear material; nuclear fuel cycle-related research and development activities not involving nuclear material; and other activities involving nuclear material not currently subject to the U.S.-IAEA Safeguards Agreement. The total estimated annual burden hours for these reporting requirements will be 2,161 hours and the total estimated annual cost will be $96,467, or $747.81 per respondent.

Second, this rule establishes on-site verification (i.e., complementary access) requirements in Part 784 of the APR. Any location required to submit an *Initial Report, Annual Update Report,* or

No Changes Report to BIS, pursuant to Part 783 of the APR, will be treated as a reportable location under the APR and, as such, may be subject to complementary access by the IAEA. The fact that a location is required to submit a report to BIS will not automatically trigger complementary access by the IAEA, although it may provide the basis for complementary access. Information reported to BIS and included in the U.S. declaration will be analyzed by the IAEA before the IAEA decides whether or not to request complementary access to a particular location. In addition to providing the IAEA with complementary access to reportable locations, Part 784 of the APR provides that other locations specified by the IAEA may be subject to complementary access. The specific purpose of complementary access will be location dependent. Complementary access to uranium hard-rock mine locations will be limited to enabling the IAEA to verify, on a selective basis, the absence of undeclared nuclear material and nuclear related activities. For all other locations subject to the APR, the purpose of complementary access will be limited to allowing the IAEA to resolve questions relating to the correctness and completeness of the information provided in the U.S. declaration or to resolve inconsistencies relating to that information. The total estimated annual burden hours for these complementary access requirements will be 1,153 hours and the total estimated annual cost will be $32,070, or $248 per respondent.

Third, this rule establishes compliance review requirements in section 782.3 of the APR that authorize BIS to request information, periodically, from persons and locations subject to the APR to determine compliance with the APR reporting and recordkeeping requirements. Information requested may relate to nuclear fuel cycle research and development activities not involving nuclear material, nuclear-related manufacturing, assembly or construction activities, or uranium hard-rock mining activities as described in Part 783 of the APR. Any person or location subject to the APR and receiving such a request for information will be required to submit a response to BIS within 30 calendar days of receipt of the request. The total estimated annual burden hours for these compliance review requirements will be 43 hours and the total estimated annual cost will be $1,897.20, or $14.70 per respondent.

Fourth, this rule establishes recordkeeping provisions in Part 786 of the APR in accordance with which each person or location required to submit a report or correspondence under Parts 782 through 784 of the APR must retain all supporting materials and documentation used to prepare the report or correspondence. All such supporting materials and documentation must be retained by the person or location for three years from the due date of the applicable report or for three years from the date of submission of the applicable report, whichever will be later. Upon request by BIS, the person or location also will be required to permit access to and copying of any records related to compliance with the requirements of the APR. The total estimated annual cost for these APR recordkeeping requirements will be $8,707.50. (Note: Since the AP-related recordkeeping burden estimate is based upon the cost of storage space rather than the number of burden hours, this estimate does not include the total annual burden hours associated with the APR recordkeeping requirements.)

The total estimated annual burden hours required to implement the reporting, complementary access, compliance review, and recordkeeping requirements described above will be 3,357 burden hours and the total estimated annual cost will be $139,142. Although the primary impact of these new requirements will affect a substantial number of small entities (i.e., 129 businesses and organizations), the total economic impact on the affected entities (i.e., $139,142, per annum, for all of the affected entities) will not be significant. The average impact per entity will be $1,079 (i.e., $139,142 ÷ 129) per annum, which represents a small percentage of the net annual revenue of a typical small business. Since the requirements that this rule establishes will not impose a significant economic impact on a substantial number of small entities, BIS did not prepare a regulatory flexibility analysis for this rule.

Finally, the changes made by this rule should be viewed in light of the fact that BIS's discretion in formulating the reporting, complementary access, compliance review, and recordkeeping requirements of the APR is limited by the necessity of meeting U.S. obligations under the AP. The AP specifies the information that the United States must declare to the IAEA. In drafting the requirements and the forms for U.S. locations and U.S. persons to use, BIS has attempted to minimize the recordkeeping and reporting burden to ensure that only information that the United States must declare to the IAEA will have to be submitted to BIS.

List of Subjects

15 CFR Part 781

Nuclear fuel cycle-related activities, Imports, Treaties.

15 CFR Part 782

Nuclear fuel cycle-related activities, Reporting and recordkeeping requirements.

15 CFR Part 783

Nuclear fuel cycle-related activities, Imports, Reporting and recordkeeping requirements.

15 CFR Part 784

Nuclear fuel cycle-related activities, Imports, Reporting and recordkeeping requirements.

15 CFR Part 785

Enforcement.

15 CFR Part 786

Reporting and recordkeeping requirements.

■ Accordingly, in 15 CFR Chapter VII, new Subchapter D, titled ''Additional Protocol Regulations'' and consisting of Parts 781 through 799, is added to read as follows:

SUBCHAPTER D—ADDITIONAL PROTOCOL REGULATIONS

PART 781—GENERAL INFORMATION AND OVERVIEW OF THE ADDITIONAL PROTOCOL REGULATIONS (APR)

Sec.

781.1 Definitions of terms used in the Additional Protocol Regulations (APR).
781.2 Purposes of the Additional Protocol and APR.
781.3 Scope of the APR.
781.4 U.S. Government requests for information needed to satisfy the requirements of the APR or the Act.
781.5 Authority.

Authority: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

§ 781.1 Definitions of terms used in the Additional Protocol Regulations (APR).

The following are definitions of terms used in Parts 781 through 786 of this subchapter (collectively known as the APR), unless otherwise noted:

Access Point of Contact (A–POC). The individual at a location who will be notified by BIS immediately upon receipt of an IAEA request for complementary access to a location. BIS must be able to contact either the A–POC or alternate A–POC on a 24-hour basis. All interactions with the location for permitting and planning an IAEA

complementary access will be conducted through the A–POC or the alternate A–POC, if the A–POC is unavailable.

Act (The). The United States Additional Protocol Implementation Act of 2006 (Pub. L. 109–401).

Additional Protocol. The Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Annexes, signed at Vienna on June 12, 1998 (T. Doc. 107–097), known as the Additional Protocol.

Additional Protocol Regulations (APR). Those regulations contained in 15 CFR Parts 781 to 786 that were promulgated by the Department of Commerce to implement and enforce the Additional Protocol.

Agreement State. Any State of the United States with which the U.S. Nuclear Regulatory Commission (NRC) has entered into an effective agreement under Subsection 274b of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

Beneficiation. The concentration of nuclear ores through physical or any other non-chemical methods.

Bureau of Industry and Security (BIS). The Bureau of Industry and Security of the United States Department of Commerce, including Export Administration and Export Enforcement.

Complementary Access. The exercise of the IAEA's access rights as set forth in Articles 4 to 6 of the Additional Protocol (see Part 784 of the APR for requirements concerning the scope and conduct of complementary access).

Complementary Access Notification. A written announcement issued by BIS to a person who is subject to the APR (e.g., the owner, operator, occupant, or agent in charge of a location that is subject to the APR as specified in § 781.3(a) of the APR) that informs this person about an impending complementary access in accordance with the requirements of Part 784 of the APR.

Host Team. The U.S. Government team that accompanies the International Atomic Energy Agency (IAEA) inspectors during complementary access, as provided for in the Additional Protocol and conducted in accordance with the provisions of the APR.

Host Team Leader. The representative from the Department of Commerce who leads the Host Team during complementary access.

International Atomic Energy Agency (IAEA). The United Nations organization, headquartered in Vienna, Austria, that serves as the official international verification authority for the implementation of safeguards agreements concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

ITAR. The International Traffic in Arms Regulations (22 CFR Parts 120–130), which are administered by the Directorate of Defense Trade Controls, U.S. Department of State.

Location. Any geographical point or area declared or identified by the United States or specified by the IAEA (see ''*location specified by the IAEA*,'' as defined in this section).

Location-specific environmental sampling. The collection of environmental samples (e.g., air, water, vegetation, soil, smears) at, and in the immediate vicinity of, a location specified by the IAEA for the purpose of assisting the IAEA to draw conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location.

Location-specific subsidiary arrangement. An agreement that sets forth procedures, which have been mutually agreed upon by the United States and the IAEA, for conducting complementary access at a specific reportable location. (Also see definition of *''subsidiary arrangement''* in this section.)

Location specified by the IAEA. A location that is selected by the IAEA to:

(1) Verify the absence of undeclared nuclear material or nuclear activities; or

(2) Obtain information that the IAEA needs to amplify or clarify information contained in the U.S. declaration.

Managed access. Procedures implemented by the Host Team during complementary access to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, to protect proprietary or commercially sensitive information, or to protect activities of direct national security significance to the United States, including information associated with such activities, in accordance with the Additional Protocol.

National Security Exclusion (NSE). The right of the United States, as specified under Article 1.b of the Additional Protocol, to exclude the application of the Additional Protocol when the United States Government determines that its application would result in access by the IAEA to activities of direct national security significance to the United States or to locations or information associated with such activities.

NRC. The U.S. Nuclear Regulatory Commission.

Nuclear fuel cycle-related research and development. Those activities that are specifically related to any process or system development aspect of any of the following:

(1) Conversion of nuclear material;

(2) Enrichment of nuclear material;

(3) Nuclear fuel fabrication;

(4) Reactors;

(5) Critical facilities;

(6) Reprocessing of nuclear fuel; or

(7) Processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233.

Nuclear Material. Any source material or special fissionable material, as follows.

(1) *Source material* means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical, or concentrate. The term source material shall not be interpreted as applying to ore or ore residue.

(2) *Special fissionable material* means plutonium 239; uranium 233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing, but the term special fissionable material does not include source material.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Report Point of Contact (R–POC). A person whom BIS may contact for the purposes of clarification of information provided in report(s) and for general information. The R–POC need not be the person who prepares the forms or certifies the report(s) for submission to BIS, but should be familiar with the content of the reports.

Reportable Location. A location that must submit an *Initial Report, Annual Update Report,* or *No Changes Report* to BIS, in accordance with the provisions of the APR, is considered to be a ''reportable location'' with reportable activities (see § 783.1(a) and (b) of the APR for nuclear fuel cycle-related activities subject to these reporting requirements).

Reporting Code. A unique identification used for identifying a location where one or more nuclear fuel cycle-related activities subject to the

reporting requirements of the APR are located.

Subsidiary Arrangement (or General Subsidiary Arrangement). An agreement that sets forth procedures, which have been mutually agreed upon by the United States and the IAEA, for implementing the Additional Protocol, irrespective of the location. (Also see the definition of *''location-specific subsidiary arrangement''* in this section.)

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

Uranium Hard-Rock Mine. Means any of the following:

(1) An area of land from which uranium is extracted in non-liquid form;

(2) Private ways and roads appurtenant to such an area; and

(3) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such uranium ore from its natural deposits in non-liquid form, or if in liquid form, with workers underground, or used in, or to be used in, the concentration of such uranium ore, or the work of the uranium ore.

Uranium Hard-Rock Mine (Closed-down). A uranium hard-rock mine where ore production has ceased and the mine or its infrastructure is not capable of further operation.

Uranium Hard-Rock Mine (Operating). A uranium hard-rock mine where ore is produced on a routine basis.

Uranium Hard-Rock Mine (Suspended). A uranium hard-rock mine where ore production has ceased, but the mine and its infrastructure are capable of further operation.

U.S. declaration. The information submitted by the United States to the IAEA in fulfillment of U.S. obligations under the Additional Protocol.

United States Government locations. Those locations owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those locations leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). United States Government locations do not include locations owned by a U.S. Government agency and leased to a private organization or other entity such that the private organization or entity may independently decide the purposes for which the locations will be used.

Wide-area environmental sampling. The collection of environmental samples (e.g., air, water, vegetation, soil, smears) at a set of locations specified by the IAEA for the purpose of assisting the IAEA to draw conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area.

You. The term ''you'' or ''your'' means any person. With regard to the reporting requirements of the APR, ''you'' refers to persons that have an obligation to report certain activities under the provisions of the APR. (Also see the definition of *''person''* in this section.)

§ 781.2 Purposes of the Additional Protocol and APR.

(a) *General.* The Additional Protocol is a supplement to the existing U.S.–IAEA Safeguards Agreement, which entered into force in 1980. It provides the IAEA with access to additional information about civil nuclear and nuclear-related items, materials, and activities and with physical access to reportable locations where nuclear facilities, materials, or ores are located (to ensure the absence of undeclared nuclear material and activities) and to other reportable locations and locations specified by the IAEA (to resolve questions or inconsistencies related to the U.S. Declaration). The Additional Protocol is based upon and is virtually identical to the IAEA Model Additional Protocol (see IAEA Information Circular, INFCIRC/540, at *http://www.iaea.org/Publications/Documents/Infcircs/index.html*), except that it excludes IAEA access to activities with direct national security significance to the United States, or to locations or information associated with such activities, and provides for managed access in connection with those same activities and to locations or information associated with those activities.

(b) *Purposes of the Additional Protocol.* The Additional Protocol is designed to enhance the effectiveness of the U.S.–IAEA Safeguards Agreement by providing the IAEA with information about aspects of the U.S. civil nuclear fuel cycle, including: Mining and concentration of nuclear ores; nuclear-related equipment manufacturing, assembly, or construction; imports, exports, and other activities involving certain source material (i.e., source material that has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched); imports and exports of specified nuclear equipment and non-nuclear material; nuclear fuel cycle-related research and development activities not involving nuclear material; and other activities involving nuclear material not currently subject to the U.S.–IAEA Safeguards Agreement (e.g., nuclear material that has been exempted from safeguards pursuant to paragraph 37 of INFCIRC/153 (Corrected) June 1972).

(c) *Purposes of the Additional Protocol Regulations.* To fulfill certain obligations of the United States under the Additional Protocol, BIS has established the APR, which require the reporting of information to BIS (as described in Parts 783 and 784 of the APR) from all persons and locations in the United States (as described in § 781.3(a) of the APR) with reportable activities. This information, together with information reported to other U.S. Government agencies and less any information to which the U.S. Government applies the national security exclusion, is aggregated into a U.S. declaration, which is submitted annually to the IAEA. The APR also provide for complementary access at such locations in accordance with the provisions in Part 784 of the APR.

§ 781.3 Scope of the APR.

The Additional Protocol Regulations or APR implement certain obligations of the United States under the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency Concerning the Application of Safeguards in the United States of America, known as the Additional Protocol.

(a) *Persons and locations subject to the APR.* The APR, promulgated by the Department of Commerce, shall apply to all persons and locations in the United States, *except*:

(1) Locations that are subject to the regulatory authority of the Nuclear Regulatory Commission (NRC), pursuant to the NRC's regulatory jurisdiction under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); and

(2) The following *United States Government locations* (see definition in § 781.1 of the APR):

(i) Department of Energy locations;

(ii) Department of Defense locations;

(iii) Central Intelligence Agency locations; and

(iv) Department of State locations.

(b) *Activities subject to the APR.* The activities that are subject to the recordkeeping and reporting requirements described in the APR are found in Parts 783 and 784 of this subchapter (APR).

§ 781.4 U.S. Government requests for information needed to satisfy the requirements of the APR or the Act.

From time-to-time, one or more U.S. Government agencies (i.e., the Department of Defense, the Department of Energy, the NRC, or BIS) may contact a location to request information that the U.S. Government has determined to be necessary to satisfy certain requirements of the APR or the Act (e.g., clarification requests or vulnerability assessments). If the manner of providing such information is not specified in the APR, the agency in question will provide the location with appropriate instructions.

§ 781.5 Authority.

The APR implement certain provisions of the Additional Protocol under the authority of the Additional Protocol Implementation Act of 2006 (Pub. L. 109–401, 120 Stat. 2726 (December 18, 2006)). In Executive Order 13458 of February 4, 2008, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act, but necessary to implement certain declaration and complementary access requirements of the Additional Protocol and the Act.

PART 782—GENERAL INFORMATION REGARDING REPORTING REQUIREMENTS AND PROCEDURES

Sec.

782.1 Overview of reporting requirements under the APR.
782.2 Persons responsible for submitting reports required under the APR.
782.3 Compliance review.
782.4 Assistance in determining your obligations.
782.5 Where to obtain APR report forms.
782.6 Where to submit reports.

Authority: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

§ 782.1 Overview of reporting requirements under the APR.

Part 783 of the APR describes the reporting requirements for certain activities specified in the APR. For each activity specified in Part 783, BIS may require that an *Initial Report*, an *Annual Update Report*, a *No Changes Report*, an *Import Confirmation Report*, a *Supplemental Information Report*, or an *Amended Report* be submitted to BIS. In addition, persons subject to the APR may be required to provide BIS with information needed to assist the IAEA in clarifying or verifying information specified in the U.S. declaration or in clarifying or amplifying information concerning the nature of the activities conducted at a location (see §§ 783.1(d) and 784.1(b)(2) of the APR for requirements concerning a *Supplemental Information Report*). If, after reviewing Part 783 of the APR, you determine that you are subject to one or more APR reporting requirements, you may obtain the appropriate forms by contacting BIS (see § 782.5 of the APR). In addition, forms may be downloaded from the Internet at *http://www.ap.gov*.

§ 782.2 Persons responsible for submitting reports required under the APR.

The owner, operator, or senior management official of a location subject to the reporting requirements in Part 783 of the APR is responsible for the submission of all required reports and documents in accordance with all applicable provisions of the APR.

§ 782.3 Compliance review.

Periodically, BIS will request information from persons and locations subject to the APR to determine compliance with the reporting and recordkeeping requirements set forth herein. Information requested may relate to nuclear fuel cycle research and development activities not involving nuclear material, nuclear-related manufacturing, assembly or construction activities, or uranium hard-rock mining activities as described in Part 783 of the APR. Any person or location subject to the APR and receiving such a request for information must submit a response to BIS within 30 calendar days of receipt of the request. If the requested information cannot be provided to BIS, the response must fully explain the reason why such information cannot be provided. If additional time is needed to collect the requested information, the person or location should request an extension of the submission deadline, before the expiration of the 30-day time period set by BIS, and include an explanation for why an extension is needed. BIS will grant only one extension of the submission deadline. The maximum period of time for which BIS will grant an extension will be 30 days. Failure to respond to this request could lead to an investigation of the person's or location's reporting and recordkeeping procedures under the APR.

§ 782.4 Assistance in determining your obligations.

(a) *Determining if your activity is subject to reporting requirements.* (1) If you need assistance in determining whether or not your activity is subject to the APR's reporting requirements, submit your written request for an activity determination to BIS. Such requests may be sent to BIS via facsimile to (202) 482–1731, e-mailed to *apdr@bis.doc.gov,* or hand delivered, submitted by courier, or mailed to BIS, in hard copy, to the following address: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Attn: AP Activity Determination, 14th Street and Pennsylvania Avenue, NW., Room 4515, Washington, DC 20230. Your activity determination request should include the information indicated in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that would be relevant to the activity described in your request. If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BIS cannot make a determination based upon the information submitted, BIS will return the request to you and identify the additional information that is necessary to complete an activity determination. BIS will provide a written response to your activity determination request within 10 business days of receipt of the request.

(2) You must include the following information when submitting an activity determination request to BIS:

(i) Date of your request;

(ii) Name of your organization and complete street address;

(iii) Point of contact for your organization;

(iv) Phone and facsimile number for your point of contact;

(v) E-mail address for your point of contact, if you want BIS to provide an acknowledgment of receipt via e-mail; and

(vi) Description of your activity in sufficient detail as to allow BIS to make an accurate determination.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of the APR or need assistance with APR report forms or complementary access issues, contact BIS's Treaty Compliance Division by phone at (202) 482–1001. If you require a written response from BIS, submit a detailed request to BIS that explains your question, issue, or request. Send the request to the address or facsimile included in paragraph (a) of this section, or e-mail the request to *apqa@bis.doc.gov.* To ensure that your request is properly routed, include the notation, ''ATTENTION: APR Advisory Request,'' on your submission to BIS.

§ 782.5 Where to obtain APR report forms.

Report forms required by the APR may be downloaded from the Internet at *http://www.ap.gov.* You also may obtain these forms by contacting: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Attn: Forms Request, 14th Street and Pennsylvania Avenue, NW., Room 4515, Washington, DC 20230, Telephone: (202) 482–1001.

§ 782.6 Where to submit reports.

Reports required by the APR must be sent to BIS via facsimile to (202) 482–1731 or hand delivered , submitted by courier, or mailed to BIS, in hard copy, to the following address: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Attn: AP Reports, 14th Street and Pennsylvania Avenue, NW., Room 4515, Washington, DC 20230, Telephone: (202) 482–1001. Specific types of reports and due dates are outlined in Supplement No. 1 to Part 783 of the APR.

PART 783—CIVIL NUCLEAR FUEL CYCLE-RELATED ACTIVITIES NOT INVOLVING NUCLEAR MATERIALS

Sec.

783.1 Reporting requirements.
783.2 Amended reports.
783.3 Reports containing information determined by BIS not to be required by the APR.
783.4 Deadlines for submission of reports and amendments.
Supplement No. 1 to Part 783—Deadlines for Submission of Reports and Amendments
Supplement No. 2 to Part 783—Manufacturing Activities
Supplement No. 3 to Part 783—List of Specified Equipment and Non-Nuclear Material for the Reporting of Imports

Authority: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

§ 783.1 Reporting requirements.

(a) *Initial report.* You must submit an *Initial Report* to BIS, no later than December 1, 2008 (see Supplement No. 1 to this Part), if you were engaged in any of the civil nuclear fuel cycle-related activities described in this paragraph (a) on October 31, 2008 or you were engaged in any such activities involving uranium hard-rock mines, including those that were closed down during calendar year 2008, (up to and including October 31, 2008). If you commenced any of the civil nuclear fuel cycle-related activities described in this paragraph (a) after October 31, 2008, you must submit an *Initial Report* on these activities to BIS no later than January 31 of the year following the calendar year in which the activities commenced (see Supplement No. 1 to this Part). You may report these activities as part of your *Annual Update Report*, in lieu of submitting a separate *Initial Report*, if you also have an *Annual Update Report* requirement that applies to the same location and covers the same reporting period (see paragraph (b) of this section). In order to satisfy the *Initial Report* requirements under this paragraph (a), you must complete and submit to BIS Form AP–1, Form AP–2, and other appropriate Forms, as provided in this paragraph (a).

(1) *Research and development activities not involving nuclear material.* You must report to BIS any of the civil nuclear fuel cycle-related research and development activities identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. Activities subject to these APR reporting requirements include research and development activities related to safe equipment operations for a nuclear fuel cycle-related activity, but do not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance.

(i) You must complete Form AP–3 and submit it to BIS, as provided in § 782.6 of the APR, if you conducted any civil nuclear fuel cycle-related research and development activities defined in § 781.1 of the APR that:

(A) Did not involve nuclear material; and

(B) Were funded, specifically authorized or controlled by, or conducted on behalf of, the United States.

(ii) You must complete Form AP–4 and submit it to BIS, as provided in § 782.6 of the APR, if you conducted any civil nuclear fuel cycle-related research and development activities defined in § 781.1 of the APR that:

(A) Did not involve nuclear material;

(B) Were specifically related to enrichment, reprocessing of nuclear fuel, or the processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 (where ''processing'' involves the separation of elements); and

(C) Were not funded, specifically authorized or controlled by, or conducted on behalf of, the United States.

(2) *Civil nuclear-related manufacturing, assembly or construction activities.* You must complete Form AP–5 and submit it to BIS, as provided in § 782.6 of the APR, if you engaged in any of the activities specified in Supplement No. 2 to this Part.

(3) *Uranium hard-rock mining and ore beneficiation activities.* You must complete Form AP–6 and submit it to BIS, as provided in § 782.6 of the APR, if your location is either a uranium hard-rock mine or an ore beneficiation plant that was in operating or suspended status (see § 781.1 of the APR for the definitions of ''uranium hard-rock mine'' and uranium hard-rock mines in ''operating,'' ''suspended,'' or ''closed-down'' status).

(i) The *Initial Report* requirement for calendar year 2008 applies to:

(A) Uranium hard-rock mines or ore beneficiation plants that were in operating or suspended status on October 31, 2008; and

(B) Uranium hard-rock mines that have changed from operating or suspended status to closed-down status during calendar year 2008 (up to and including October 31, 2008). Mines that were closed down prior to calendar year 2008 and that remain in closed-down status do not have a reporting requirement.

(ii) You are required to submit an *Initial Report* to BIS, for any calendar year that follows calendar year 2008, only if you commenced operations at a uranium hard-rock mine or an ore beneficiation plant during the previous calendar year (e.g., the commencement of operations would include, but not be limited to, the resumption of operations at a mine that was previously in ''closed-down'' status). Otherwise, see the *Annual Update Report and No Changes Report* requirements in paragraphs (b)(1) or (b)(2) of this section. For example, you must submit an *Annual Update Report* to indicate the closed-down status of any uranium hard-rock mine that was indicated in your most recent report to be in either operating or suspended status, but at

which you ceased operations during the previous calendar year.

(b) *Annual reporting requirements.* You must submit either an *Annual Update Report* or a *No Changes Report* to BIS, as provided in § 782.6 of the APR, if, during the previous calendar year, you continued to engage in civil nuclear fuel cycle-related activities at a location for which you submitted an *Initial Report* to BIS in accordance with the APR reporting requirements described in paragraph (a) of this section.

(1) *Annual Update Report.* You must submit an *Annual Update Report* to BIS if you have updates or changes to report concerning your location's activities during the previous calendar year. When preparing your *Annual Update Report*, you must complete the same report forms that you used for submitting your *Initial Report* on these activities. However, additional report forms will be required if your location engaged in any civil nuclear fuel cycle-related activities described in paragraph (a) of this section that you did not previously report to BIS. The appropriate report forms for each type of activity that must be reported under the APR are identified in paragraphs (a)(1) through (a)(3) of this section. You must submit your *Annual Update Report* to BIS no later than January 31 of the year following any calendar year in which the activities took place or there were changes to previously ''reported'' activities (see Supplement No. 1 to this Part).

(2) *No Changes Report.* You may submit a *No Changes Report*, in lieu of an *Annual Update Report*, if you have no updates or changes concerning your location's activities (except the certifying official and dates signed and submitted) since your most recent report of activities to BIS. In order to satisfy the reporting requirements under this paragraph (b)(2), you must complete Form AP–16 and submit it to BIS, as provided in § 782.6 of the APR, no later than January 31 of the year following any calendar year in which there were no changes to previously ''reported'' activities or location information (see Supplement No. 1 to this Part).

(3) *Additional guidance on annual reporting requirements.* (i) If your *Initial Report* or your most recent *Annual Update Report* for a location indicates that all civil nuclear fuel cycle-related activities described therein have ceased at that location, and no other reportable activities have occurred during the previous calendar year, then you do not have a reporting requirement for the location under paragraph (b) of this section.

(ii) If your location ceases to engage in activities subject to the APR reporting requirements described in paragraph (a) of this section, and you have not previously reported this to BIS, you must submit an *Annual Update Report* covering the calendar year in which you ceased to engage in such activities.

(iii) Closed-down mines should be reported only once.

(c) *Import Confirmation Report.* You must complete Forms AP–1, AP–2 and AP–14 for each import of equipment or non-nuclear material identified in Supplement No. 3 to this Part and submit these forms to BIS, as provided in § 782.6 of the APR, if BIS sends you written notification requiring that you provide information concerning imports of such equipment and non-nuclear material. These Forms must be submitted within 30 calendar days of the date that you receive written notification of this requirement from BIS (see Supplement No. 1 to this Part). BIS will provide such notification when it receives a request from the IAEA for information concerning imports of this type of equipment or non-nuclear material. The IAEA may request this information to verify that you received specified equipment or non-nuclear material that was shipped to you by a person, organization, or government from a foreign country.

(d) *Supplemental Information Report.* You must complete Forms AP–1, AP–2 and AP–15 and submit them to BIS, as provided in § 782.6 of the APR, if BIS sends you written notification requiring that you provide information about the activities conducted at your location, insofar as relevant for the purpose of safeguards. These Forms must be submitted within 15 calendar days of the date that you receive written notification of this requirement from BIS (see Supplement No. 1 to this Part). BIS will provide such notification only if the IAEA specifically requests amplification or clarification concerning any information provided in the U.S. Declaration based on your report(s).

(e) *Reportable location.* A location that must submit an *Initial Report, Annual Update Report, or No Changes Report* to BIS, pursuant to the requirements of this section, is considered to be a reportable location with declared activities.

§ 783.2 Amended reports.

In order for BIS to maintain accurate information on previously submitted reports, including information necessary for BIS to facilitate complementary access notifications or to communicate reporting requirements under the APR, *Amended Reports* are required under the circumstances described in paragraphs (a), (b), and (d) of this section. This section applies only to changes affecting *Initial Reports* and *Annual Update Reports* that were submitted to BIS in accordance with the requirements of § 783.1(a) and (b) of the APR. The specific report forms that you must use to prepare and submit an *Amended Report* will depend upon the type of information that you are required to provide, pursuant to this section.

(a) *Changes to activity information.* You must submit an *Amended Report* to BIS within 30 calendar days of the time that you discover an error or omission in your most recent *Initial Report* or *Annual Update Report* that involves information concerning an activity subject to the reporting requirements described in § 783.1(a) or (b) of the APR. Use Form AP–1, and any applicable report forms indicated for the activities identified in § 783.1(a) of the APR, to prepare your *Amended Report.* Submit your *Amended Report* to BIS, as provided in § 782.6 of the APR.

(b) *Changes to organization and location information that must be maintained by BIS.* (1) *Internal organization changes.* You must submit an *Amended Report* to BIS within 30 calendar days of any change in the following information (use Form AP–1 to prepare your *Amended Report* and submit it to BIS, as provided in § 782.6 of the APR):

(i) Name of report point of contact (R–POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of complementary access point(s) of contact (A–POC), including telephone number(s), facsimile number(s) and e-mail address(es);

(iii) Organization name;

(iv) Organization mailing address;

(v) Location owner, including telephone number, and facsimile number; or

(vi) Location operator, including telephone number, and facsimile number.

(2) *Change in ownership of organization.* You must submit an *Amended Report* to BIS if you sold a reportable location or if your reportable location went out of business since submitting your most recent *Initial Report, Annual Update Report,* or *No Changes Report* to BIS. You must also submit an *Amended Report* to BIS if you purchased a reportable location that submitted an *Initial Report, Annual Update Report,* or *No Changes Report* to BIS for the most recent reporting period, as specified in § 783.1(a) and (b) of the APR. Submit your *Amended Report* to BIS, as provided in § 782.6 of the APR,

either before the effective date of the change in ownership or within 30 calendar days after the effective date of the change.

(i) The following information must be included in an *Amended Report* submitted to BIS by an organization that is selling or that has sold a reportable location (use Forms AP–1 and AP–16 to prepare your *Amended Report*—address specific details regarding the sale of a reportable location in Form AP–16):

(A) Name of seller (i.e., name of the organization selling a reportable location);

(B) Reporting Code (this code will be assigned to your location and reported to you by BIS after receipt of your *Initial Report*);

(C) Name of purchaser (i.e., name of the new organization/owner purchasing a reportable location) and name and address of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional details on the sale of the reportable location relevant to ownership or operational control over any portion of the reportable location (e.g., whether the entire location or only a portion of the reportable location has been sold to a new owner); and

(F) Details regarding whether the new owner of a reportable location will submit the next report for the entire calendar year in which the ownership change occurred, or whether the previous owner and new owner will submit separate reports for the periods of the calendar year during which each owned the reportable location.

(ii) The following information must be included in an *Amended Report* submitted to BIS by an organization that is purchasing or that has purchased a reportable location (use Forms AP–1 and AP–2 to prepare your *Amended Report*):

(A) Name of purchaser (i.e., name of the new organization/owner purchasing a reportable location) and name and address of contact person for the purchaser;

(B) Details on the purchase of the reportable location relevant to ownership or operational control over any portion of the reportable location (e.g., whether the purchaser intends to purchase and to maintain operational control over the entire location or only a portion of the reportable location); and

(C) Details on whether the purchaser intends to continue existing civil nuclear fuel cycle-related activities at the reportable location or to cease such activities during the current reporting period.

(iii) If the new owner of a reportable location is responsible for submitting a report that covers the entire calendar year in which the ownership change occurred, the new owner must obtain and maintain possession of the location's records covering the entire year, including those records for the period of the year during which the previous owner still owned the property.

Note 1 to § 783.2(b): *Amended Reports* that are submitted to identify changes involving internal organization information or changes in ownership are used only for internal U.S. Government purposes and are not forwarded to the IAEA. BIS uses the information it obtains from *Amended Reports* to update contact information for internal oversight purposes and for IAEA complementary access notifications.

Note 2 to § 783.2(b): For ownership changes, the reportable location will maintain its original Reporting Code, unless the location is sold to multiple owners, at which time BIS will assign a new Reporting Code.

(c) *Non-substantive changes.* If you discover one or more non-substantive typographical errors in your *Initial Report* or *Annual Update Report,* after submitting the report to BIS, you are not required to submit an *Amended Report* to BIS. Instead, you may correct these errors when you submit your next *Annual Update Report* to BIS.

(d) *Amendments related to complementary access.* If you are required to submit an *Amended Report* to BIS following the completion of complementary access (see Part 784 of the APR), BIS will notify you, in writing, of the information that must be amended pursuant to § 784.6 of the APR. Complete and submit Form AP–1 (organization information) and/or the specific report forms required by section 783.1(a) or (b) of the APR, according to the type(s) of activities for which information is being requested. You must submit your *Amended Report* to BIS, as provided in § 782.6 of the APR, no later than 30 calendar days following your receipt of BIS's post complementary access letter.

(e) *Option for submitting amended reports in letter form.* If you are required to submit an *Amended Report* to BIS, pursuant to paragraph (a), (b), or (d) of this section, BIS may permit you to submit your report in the form of a letter that contains all of the corrected information required under this section. Your letter must be submitted to BIS, at the address indicated in § 782.6 of the APR, no later than the applicable due date(s) indicated in this section (also see Supplement No. 1 to this Part).

§ 783.3 Reports containing information determined by BIS not to be required by the APR.

If you submit a report and BIS determines that none of the information contained therein is required by the APR, BIS will not process the report and will notify you, either electronically or in writing, explaining the basis for its decision. BIS will not maintain any record of the report. However, BIS will maintain a copy of the notification.

§ 783.4 Deadlines for submission of reports and amendments.

Reports and amendments required under this Part must be postmarked by the appropriate date identified in Supplement No. 1 to this Part 783. Required reports and amendments include those identified in paragraphs (a) through (g) of this section.

(a) *Initial Report:* Submitted by a location that commenced one or more of the civil nuclear fuel cycle-related activities described in § 783.1(a) of the APR during the previous calendar year, but that has not yet reported such activities to BIS. However, *Initial Reports* that are submitted to BIS during calendar year 2008 must describe only those activities in which you are engaged as of October 31, 2008, *except that* the description of activities involving uranium hard-rock mines must include any such mines that were closed down during calendar year 2008 (up to and including October 31, 2008), as well as mines that were in either operating or suspended status on October 31, 2008 (see § 783.1(a)(3)(i) of the APR).

(b) *Annual Update Report:* Submitted by a reportable location—this report describes changes to previously reported (i.e., declared) activities and any other reportable civil nuclear fuel cycle-related activities that took place at the location during the previous calendar year.

(c) *No Changes Report:* Submitted by a reportable location, in lieu of an *Annual Update Report,* when there are no updates or changes to any information, excluding the certifying official and dates signed and submitted, since the previous report submitted by that location.

(d) *Import Confirmation Report:* Submitted in response to a written notification from BIS, following a specific request by the IAEA.

(e) *Supplemental Information Report:* Submitted in response to a written notification from BIS, following a specific request by the IAEA.

(f) *Amended Report:* Submitted by a reportable location to report certain changes affecting the location's most

recent *Initial Report* or *Annual Update Report.*

Supplement No. 1 to Part 783

Deadlines for Submission of Reports and Amendments

Reports	Applicable forms	Due dates
Initial Report	Forms AP–1 and AP–2 and: —AP–3 or AP–4 for R&D activities; —AP–5 for civil nuclear-related manufacturing, assembly or construction; and —AP–6 for mining and ore beneficiation	December 1, 2008 for: (1) Any activities in which you were engaged on October 31, 2008 and (2) uranium hard-rock mines that have changed from operating or suspended status to closed-down status during calendar year 2008 (up to and including October 31, 2008). For activities commencing after October 31, 2008, *Initial Reports* must be submitted no later than January 31 of the year following any calendar year in which the activities began, *unless* you are required to submit an *Annual Update Report* because of on-going previously ''reported'' activities at the same location—in that case, you may include the new activities in your *Annual Update Report,* instead of submitting a separate *Initial Report.*
Annual Update Report	Forms AP–1 and AP–2 and: —AP–3 or AP–4 for R&D activities; —AP–5 for civil nuclear-related manufacturing, assembly or construction; and —AP–6 for mining and ore beneficiation	January 31 of the year following any calendar year in which the activities took place or there were changes to previously ''reported'' activities.
No Changes Report	Form AP–17	January 31 of the year following any calendar year in which there were no changes to previously ''reported'' activities or location information.
Import Confirmation Report	Forms AP–1, AP–2, and AP–14	Within 30 calendar days of receiving notification from BIS.
Supplemental Information Report	Forms AP–1, AP–2, and AP–15	Within 15 calendar days of receiving notification from BIS.
Amended Report: —Report information —Organization and location information —Complementary access letter	Form AP–1 and appropriate forms, as specified in § 783.1 of the APR, for the type of report being amended.	Amended report due: —30 calendar days after you discover an error or omission in activity information contained in your most recent report. —30 calendar days after a change in company information or ownership of a location. —30 calendar days after receipt of a post-complementary access letter from BIS.

Supplement No. 2 to Part 783—Manufacturing Activities

The following constitute manufacturing activities that require the submission of a report to BIS, pursuant to § 783.1(a)(2) of the APR.

(1) The manufacture of *centrifuge rotor tubes* or the assembly of *gas centrifuges. Centrifuge rotor tubes* means thin-walled cylinders as described in section 5.1.1(b) of Supplement No. 3 to this Part. *Gas centrifuges* means centrifuges as described in the Introductory Note to section 5.1 of Supplement No. 3 to this Part.

(2) The manufacture of *diffusion barriers. Diffusion barriers* means thin, porous filters as described in section 5.3.1(a) of Supplement No. 3 to this Part.

(3) The manufacture or assembly of *laser-based systems. Laser-based systems* means systems incorporating those items as described in section 5.7 of Supplement No. 3 to this Part.

(4) The manufacture or assembly of *electromagnetic isotope separators. Electromagnetic isotope separators* means those items referred to in Section 5.9.1 of Supplement No. 3 to this Part containing ion sources as described in section 5.9.1(a) of Supplement No. 3 to this Part.

(5) The manufacture or assembly of *columns* or *extraction equipment. Columns* or *extraction equipment* means those items as described in sections 5.6.1, 5.6.2, 5.6.3, 5.6.5, 5.6.6, 5.6.7, and 5.6.8 of Supplement No. 3 to this Part.

(6) The manufacture of *aerodynamic separation nozzles* or *vortex tubes. Aerodynamic separation nozzles* or *vortex tubes* means separation nozzles and vortex tubes as described, respectively, in sections 5.5.1 and 5.5.2 of Supplement No. 3 to this Part.

(7) The manufacture or assembly of *uranium plasma generation systems. Uranium plasma generation systems* means systems for the generation of uranium plasma as described in section 5.8.3 of Supplement No. 3 to this Part.

(8) The manufacture of *zirconium tubes. Zirconium tubes* means tubes as described in section 1.6 of Supplement No. 3 to this Part.

(9) The manufacture or upgrading of *heavy water or deuterium. Heavy water or deuterium* means deuterium, heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen atoms exceeds 1:5000.

(10) The manufacture of *nuclear grade graphite. Nuclear grade graphite* means graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 g/cm^3;

(11) The manufacture of *flasks for irradiated fuel.* A *flask for irradiated fuel* means a vessel for the transportation and/or storage of irradiated fuel that provides chemical, thermal and radiological protection, and dissipates decay heat during handling, transportation and storage.

(12) The manufacture of *reactor control rods. Reactor control rods* means rods as described in section 1.4 of Supplement No. 3 to this Part.

(13) The manufacture of *critically safe tanks and vessels. Critically safe tanks and vessels* means those items as described in sections 3.2 and 3.4 of Supplement No. 3 to this Part.

(14) The manufacture of *irradiated fuel element chopping machines. Irradiated fuel element chopping machines* means equipment as described in section 3.1 of Supplement No. 3 to this Part.

(15) The construction of *hot cells. Hot cells* means a cell or interconnected cells totaling at least 6 cubic meters in volume with shielding equal to or greater than the

equivalent of 0.5 meters of concrete, with a density of 3.2 g/cm^3 or greater, outfitted with equipment for remote operations.

Supplement No. 3 to Part 783

List of Specified Equipment and Non-Nuclear Material for the Reporting of Imports

1. Reactors and equipment therefor

1.1. Complete nuclear reactors

Nuclear reactors capable of operation so as to maintain a controlled self-sustaining fission chain reaction, excluding zero energy reactors, the latter being defined as reactors with a designed maximum rate of production of plutonium not exceeding 100 grams per year.

Explanatory Note: A ''nuclear reactor'' basically includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain or come in direct contact with or control the primary coolant of the reactor core. It is not intended to exclude reactors which could reasonably be capable of modification to produce significantly more than 100 grams of plutonium per year. Reactors designed for sustained operation at significant power levels, regardless of their capacity for plutonium production, are not considered as ''zero energy reactors.''

1.2. Reactor pressure vessels

Metal vessels, as complete units or as major shop-fabricated parts therefor, which are specially designed or prepared to contain the core of a nuclear reactor, as defined in section 1.1, and are capable of withstanding the operating pressure of the primary coolant.

Explanatory Note: This is the list that the IAEA Board of Governors agreed at its meeting on 24 February 1993 would be used for the purpose of the voluntary reporting scheme, as subsequently amended by the Board. A top plate for a reactor pressure vessel is covered by this section 1.2 as a major shop-fabricated part of a pressure vessel. Reactor internals (e.g., support columns and plates for the core and other vessel internals, control rod guide tubes, thermal shields, baffles, core grid plates, diffuser plates, etc.) are normally supplied by the reactor supplier. In some cases, certain internal support components are included in the fabrication of the pressure vessel. These items are sufficiently critical to the safety and reliability of the operation of the reactor (and, therefore, to the guarantees and liability of the reactor supplier), so that their supply, outside the basic supply arrangement for the reactor itself, would not be common practice. Therefore, although the separate supply of these unique, specially designed and prepared, critical, large and expensive items would not necessarily be considered as falling outside the area of concern, such a mode of supply is considered unlikely.

1.3. Reactor fuel charging and discharging machines

Manipulative equipment specially designed or prepared for inserting or removing fuel in a nuclear reactor, as defined in section 1.1 of this Supplement, capable of on-load operation or employing technically sophisticated positioning or alignment features to allow complex off-load fueling operations such as those in which direct viewing of or access to the fuel is not normally available.

1.4. Reactor control rods

Rods specially designed or prepared for the control of the reaction rate in a nuclear reactor as defined in section 1.1 of this Supplement.

Explanatory Note: This item includes, in addition to the neutron absorbing part, the support or suspension structures therefor if supplied separately.

1.5. Reactor pressure tubes

Tubes which are specially designed or prepared to contain fuel elements and the primary coolant in a reactor, as defined in section 1.1 of this Supplement, at an operating pressure in excess of 5.1 MPa (740 psi).

1.6. Zirconium tubes

Zirconium metal and alloys in the form of tubes or assemblies of tubes, and in quantities exceeding 500 kg in any period of 12 months, specially designed or prepared for use in a reactor, as defined in section 1.1 of this Supplement, and in which the relation of hafnium to zirconium is less than 1:500 parts by weight.

1.7. Primary coolant pumps

Pumps specially designed or prepared for circulating the primary coolant for nuclear reactors, as defined in section 1.1 of this Supplement.

Explanatory Note: Specially designed or prepared pumps may include elaborate sealed or multi-sealed systems to prevent leakage of primary coolant, canned-driven pumps, and pumps with inertial mass systems. This definition encompasses pumps certified to NC–1 or equivalent standards.

2. Non-nuclear materials for reactors

2.1. Deuterium and heavy water

Deuterium, heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen atoms exceeds 1:5000 for use in a nuclear reactor, as defined in section 1.1 of this Supplement, in quantities exceeding 200 kg of deuterium atoms for any one recipient country in any period of 12 months.

2.2. Nuclear grade graphite

Graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 g/cm^3 for use in a nuclear reactor, as defined in section 1.1 of this Supplement, in quantities exceeding 3×10^4 kg (30 metric tons) for any one recipient country in any period of 12 months.

Note: For the purpose of reporting, the Government will determine whether or not the exports of graphite meeting the specifications of this section 2.2 are for nuclear reactor use.

3. Plants for the reprocessing of irradiated fuel elements, and equipment specially designed or prepared therefor

Introductory Note: Reprocessing irradiated nuclear fuel separates plutonium and uranium from intensely radioactive fission products and other transuranic elements. Different technical processes can accomplish this separation. However, over the years Purex has become the most commonly used and accepted process. Purex involves the dissolution of irradiated nuclear fuel in nitric acid, followed by separation of the uranium, plutonium, and fission products by solvent extraction using a mixture of tributyl phosphate in an organic diluent. Purex facilities have process functions similar to each other, including: Irradiated fuel element chopping, fuel dissolution, solvent extraction, and process liquor storage. There may also be equipment for thermal denitration of uranium nitrate, conversion of plutonium nitrate to oxide or metal, and treatment of fission product waste liquor to a form suitable for long term storage or disposal. However, the specific type and configuration of the equipment performing these functions may differ between Purex facilities for several reasons, including the type and quantity of irradiated nuclear fuel to be reprocessed and the intended disposition of the recovered materials, and the safety and maintenance philosophy incorporated into the design of the facility. A ''plant for the reprocessing of irradiated fuel elements'' includes the equipment and components which normally come in direct contact with and directly control the irradiated fuel and the major nuclear material and fission product processing streams. These processes, including the complete systems for plutonium conversion and plutonium metal production, may be identified by the measures taken to avoid criticality (e.g., by geometry), radiation exposure (e.g., by shielding), and toxicity hazards (e.g., by containment). Items of equipment that are considered to fall within the meaning of the phrase ''and equipment specially designed or prepared'' for the reprocessing of irradiated fuel elements include:

3.1. Irradiated fuel element chopping machines

Introductory Note: This equipment breaches the cladding of the fuel to expose the irradiated nuclear material to dissolution. Specially designed metal cutting shears are the most commonly employed, although advanced equipment, such as lasers, may be used. Remotely operated equipment specially designed or prepared for use in a reprocessing plant, as identified in the introductory paragraph of this section, and intended to cut, chop or shear irradiated nuclear fuel assemblies, bundles or rods.

3.2. Dissolvers

Introductory Note: Dissolvers normally receive the chopped-up spent fuel. In these critically safe vessels, the irradiated nuclear material is dissolved in nitric acid and the remaining hulls removed from the process stream. Critically safe tanks (*e.g.*, small

diameter, annular or slab tanks) specially designed or prepared for use in a reprocessing plant, as identified in the introductory paragraph of this section, intended for dissolution of irradiated nuclear fuel and which are capable of withstanding hot, highly corrosive liquid, and which can be remotely loaded and maintained.

3.3. Solvent extractors and solvent extraction equipment

Introductory Note: Solvent extractors both receive the solution of irradiated fuel from the dissolvers and the organic solution which separates the uranium, plutonium, and fission products. Solvent extraction equipment is normally designed to meet strict operating parameters, such as long operating lifetimes with no maintenance requirements or adaptability to easy replacement, simplicity of operation and control, and flexibility for variations in process conditions. Specially designed or prepared solvent extractors such as packed or pulse columns, mixer settlers or centrifugal contactors for use in a plant for the reprocessing of irradiated fuel. Solvent extractors must be resistant to the corrosive effect of nitric acid. Solvent extractors are normally fabricated to extremely high standards (including special welding and inspection and quality assurance and quality control techniques) out of low carbon stainless steels, titanium, zirconium, or other high quality materials.

3.4. Chemical holding or storage vessels

Introductory Note: Three main process liquor streams result from the solvent extraction step. Holding or storage vessels are used in the further processing of all three streams, as follows:

(a) The pure uranium nitrate solution is concentrated by evaporation and passed to a denitration process where it is converted to uranium oxide. This oxide is re-used in the nuclear fuel cycle.

(b) The intensely radioactive fission products solution is normally concentrated by evaporation and stored as a liquor concentrate. This concentrate may be subsequently evaporated and converted to a form suitable for storage or disposal.

(c) The pure plutonium nitrate solution is concentrated and stored pending its transfer to further process steps. In particular, holding or storage vessels for plutonium solutions are designed to avoid criticality problems resulting from changes in concentration and form of this stream. Specially designed or prepared holding or storage vessels for use in a plant for the reprocessing of irradiated fuel. The holding or storage vessels must be resistant to the corrosive effect of nitric acid. The holding or storage vessels are normally fabricated of materials such as low carbon stainless steels, titanium or zirconium, or other high quality materials. Holding or storage vessels may be designed for remote operation and maintenance and may have the following features for control of nuclear criticality: (1) Walls or internal structures with a boron equivalent of at least two percent; (2) a maximum diameter of 175 mm (7 in) for cylindrical vessels; or (3) a maximum width of 75 mm (3 in) for either a slab or annular vessel.

3.5. Plutonium nitrate to oxide conversion system

Introductory Note: In most reprocessing facilities, this final process involves the conversion of the plutonium nitrate solution to plutonium dioxide. The main functions involved in this process are: process feed storage and adjustment, precipitation and solid/liquor separation, calcination, product handling, ventilation, waste management, and process control. Complete systems specially designed or prepared for the conversion of plutonium nitrate to plutonium oxide, in particular adapted so as to avoid criticality and radiation effects and to minimize toxicity hazards.

3.6. Plutonium oxide to metal production system

Introductory Note: This process, which could be related to a reprocessing facility, involves the fluorination of plutonium dioxide, normally with highly corrosive hydrogen fluoride, to produce plutonium fluoride which is subsequently reduced using high purity calcium metal to produce metallic plutonium and a calcium fluoride slag. The main functions involved in this process are: fluorination (e.g., involving equipment fabricated or lined with a precious metal), metal reduction (e.g., employing ceramic crucibles), slag recovery, product handling, ventilation, waste management and process control. Complete systems specially designed or prepared for the production of plutonium metal, in particular adapted so as to avoid criticality and radiation effects and to minimize toxicity hazards.

4. Plants for the fabrication of fuel elements

A ''plant for the fabrication of fuel elements'' includes the equipment:

(a) Which normally comes in direct contact with, or directly processes, or controls, the production flow of nuclear material, or

(b) Which seals the nuclear material within the cladding.

5. Plants for the separation of isotopes of uranium and equipment, other than analytical instruments, specially designed or prepared therefor

Items of equipment that are considered to fall within the meaning of the phrase ''equipment, other than analytical instruments, specially designed or prepared'' for the separation of isotopes of uranium include:

5.1. Gas centrifuges and assemblies and components specially designed or prepared for use in gas centrifuges

Introductory Note: The gas centrifuge normally consists of a thin-walled cylinder(s) of between 75 mm (3 in) and 400 mm (16 in) diameter contained in a vacuum environment and spun at high peripheral speed of the order of 300 m/s or more with its central axis vertical. In order to achieve high speed the materials of construction for the rotating components have to be of a high strength to density ratio and the rotor assembly, and hence its individual components, have to be manufactured to very close tolerances in order to minimize the unbalance. In contrast to other centrifuges, the gas centrifuge for uranium enrichment is characterized by having within the rotor chamber a rotating disc-shaped baffle(s) and a stationary tube arrangement for feeding and extracting the UF_6 gas and featuring at least 3 separate channels, of which 2 are connected to scoops extending from the rotor axis towards the periphery of the rotor chamber. Also contained within the vacuum environment are a number of critical items which do not rotate and which although they are specially designed are not difficult to fabricate nor are they fabricated out of unique materials. A centrifuge facility however requires a large number of these components, so that quantities can provide an important indication of end use.

5.1.1. Rotating components

(a) *Complete rotor assemblies:* Thin-walled cylinders, or a number of interconnected thin-walled cylinders, manufactured from one or more of the high strength to density ratio materials described in the *Explanatory Note* to section 5.1.1 of this Supplement. If interconnected, the cylinders are joined together by flexible bellows or rings as described in section 5.1.1(c) of this Supplement. The rotor is fitted with an internal baffle(s) and end caps, as described in section 5.1.1(d) and (e) of this Supplement, if in final form. However the complete assembly may be delivered only partly assembled.

(b) *Rotor tubes:* Specially designed or prepared thin-walled cylinders with thickness of 12 mm (0.5 in) or less, a diameter of between 75 mm (3 in) and 400 mm (16 in), and manufactured from one or more of the high strength to density ratio materials described in the *Explanatory Note* to section 5.1.1 of this Supplement.

(c) *Rings or Bellows:* Components specially designed or prepared to give localized support to the rotor tube or to join together a number of rotor tubes. The bellows is a short cylinder of wall thickness 3 mm (0.12 in) or less, a diameter of between 75 mm (3 in) and 400 mm (16 in), having a convolute, and manufactured from one of the high strength to density ratio materials described in the *Explanatory Note* to section 5.1.1 of this Supplement.

(d) *Baffles:* Disc-shaped components of between 75 mm (3 in) and 400 mm (16 in) diameter specially designed or prepared to be mounted inside the centrifuge rotor tube, in order to isolate the take-off chamber from the main separation chamber and, in some cases, to assist the UF_6 gas circulation within the main separation chamber of the rotor tube, and manufactured from one of the high strength to density ratio materials described in the *Explanatory Note* to section 5.1.1 of this Supplement.

(e) *Top caps/Bottom caps:* Disc-shaped components of between 75 mm (3 in) and 400 mm (16 in) diameter specially designed or prepared to fit to the ends of the rotor tube, and so contain the UF_6 within the rotor tube, and in some cases to support, retain or

contain as an integrated part an element of the upper bearing (top cap) or to carry the rotating elements of the motor and lower bearing (bottom cap), and manufactured from one of the high strength to density ratio materials described in the *Explanatory Note* to section 5.1.1 of this Supplement.

Explanatory Note: The materials used for centrifuge rotating components are:

(a) Maraging steel capable of an ultimate tensile strength of 2.05×10^9 N/m^2 (300,000 psi) or more;

(b) Aluminum alloys capable of an ultimate tensile strength of 0.46×10^9 N/m^2 (67,000 psi) or more;

(c) Filamentary materials suitable for use in composite structures and having a specific modulus of 12.3×10^6 m or greater and a specific ultimate tensile strength of 0.3×10^6 m or greater (''Specific Modulus'' is the Young's Modulus in N/m^2 divided by the specific weight in N/m^3; ''Specific Ultimate Tensile Strength'' is the ultimate tensile strength in N/m^2 divided by the specific weight in N/m^3).

5.1.2. Static components

(a) *Magnetic suspension bearings:* Specially designed or prepared bearing assemblies consisting of an annular magnet suspended within a housing containing a damping medium. The housing will be manufactured from a UF_6-resistant material (see *Explanatory Note* to section 5.2 of this Supplement.). The magnet couples with a pole piece or a second magnet fitted to the top cap described in section 5.1.1(e) of this Supplement. The magnet may be ring-shaped with a relation between outer and inner diameter smaller or equal to 1.6:1. The magnet may be in a form having an initial permeability of 0.15 H/m (120,000 in CGS units) or more, or a remanence of 98.5% or more, or an energy product of greater than 80 kJ/m^3 (10^7 gauss-oersteds). In addition to the usual material properties, it is a prerequisite that the deviation of the magnetic axes from the geometrical axes is limited to very small tolerances (lower than 0.1 mm or 0.004 in) or that homogeneity of the material of the magnet is specially called for.

(b) *Bearings/Dampers:* Specially designed or prepared bearings comprising a pivot/cup assembly mounted on a damper. The pivot is normally a hardened steel shaft with a hemisphere at one end with a means of attachment to the bottom cap, described in section 5.1.1(e) of this Supplement, at the other. The shaft may however have a hydrodynamic bearing attached. The cup is pellet-shaped with a hemispherical indentation in one surface. These components are often supplied separately to the damper.

(c) *Molecular pumps:* Specially designed or prepared cylinders having internally machined or extruded helical grooves and internally machined bores. Typical dimensions are as follows: 75 mm (3 in) to 400 mm (16 in) internal diameter, 10 mm (0.4 in) or more wall thickness, with the length equal to or greater than the diameter. The grooves are typically rectangular in cross-section and 2 mm (0.08 in) or more in depth.

(d) *Motor stators:* Specially designed or prepared ring-shaped stators for high speed multiphase AC hysteresis (or reluctance) motors for synchronous operation within a vacuum in the frequency range of 600–2000 Hz and a power range of 50–1000 VA. The stators consist of multi-phase windings on a laminated low loss iron core comprised of thin layers typically 2.0 mm (0.08 in) thick or less.

(e) *Centrifuge housing/recipients:* Components specially designed or prepared to contain the rotor tube assembly of a gas centrifuge. The housing consists of a rigid cylinder of wall thickness up to 30 mm (1.2 in) with precision machined ends to locate the bearings and with one or more flanges for mounting. The machined ends are parallel to each other and perpendicular to the cylinder's longitudinal axis to within 0.05 degrees or less. The housing may also be a honeycomb type structure to accommodate several rotor tubes. The housings are made of or protected by materials resistant to corrosion by UF6.

(f) *Scoops:* Specially designed or prepared tubes of up to 12 mm (0.5 in) internal diameter for the extraction of UF6 gas from within the rotor tube by a Pitot tube action (that is, with an aperture facing into the circumferential gas flow within the rotor tube, for example by bending the end of a radially disposed tube) and capable of being fixed to the central gas extraction system. The tubes are made of or protected by materials resistant to corrosion by UF6.

5.2. Specially designed or prepared auxiliary systems, equipment and components for gas centrifuge enrichment plants

Introductory Note: The auxiliary systems, equipment and components for a gas centrifuge enrichment plant are the systems of plant needed to feed UF6 to the centrifuges, to link the individual centrifuges to each other to form cascades (or stages) to allow for progressively higher enrichments and to extract the ''product'' and ''tails'' UF6 from the centrifuges, together with the equipment required to drive the centrifuges or to control the plant. Normally UF_6 is evaporated from the solid using heated autoclaves and is distributed in gaseous form to the centrifuges by way of cascade header pipework. The ''product'' and ''tails'' UF_6 gaseous streams flowing from the centrifuges are also passed by way of cascade header pipework to cold traps (operating at about 203 K (-70 °C)) where they are condensed prior to onward transfer into suitable containers for transportation or storage. Because an enrichment plant consists of many thousands of centrifuges arranged in cascades there are many kilometers of cascade header pipework, incorporating thousands of welds with a substantial amount of repetition of layout. The equipment, components and piping systems are fabricated to very high vacuum and cleanliness standards.

5.2.1. Feed systems/product and tails withdrawal systems

Specially designed or prepared process systems including: Feed autoclaves (or stations), used for passing UF_6 to the centrifuge cascades at up to 100 kPa (15 psi) and at a rate of 1 kg/h or more; desublimers (or cold traps) used to remove UF_6 from the cascades at up to 3 kPa (0.5 psi) pressure. The desublimers are capable of being chilled to 203 K (-70 °C) and heated to 343 K (70 °C); ''Product'' and ''Tails'' stations used for trapping UF6 into containers. This plant, equipment and pipework is wholly made of or lined with UF_6-resistant materials (see *Explanatory Note* to section 5.2 of this Supplement) and is fabricated to very high vacuum and cleanliness standards.

5.2.2. Machine header piping systems

Specially designed or prepared piping systems and header systems for handling UF_6 within the centrifuge cascades. The piping network is normally of the ''triple'' header system with each centrifuge connected to each of the headers. There is thus a substantial amount of repetition in its form. It is wholly made of UF_6-resistant materials (see *Explanatory Note* to section 5.2 of this Supplement) and is fabricated to very high vacuum and cleanliness standards.

5.2.3. UF_6 mass spectrometers/ion sources

Specially designed or prepared magnetic or quadrupole mass spectrometers capable of taking ''on-line'' samples of feed, product or tails, from UF_6 gas streams and having all of the following characteristics:

(a) Unit resolution for atomic mass unit greater than 320;

(b) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(c) Electron bombardment ionization sources;

(d) Having a collector system suitable for isotopic analysis.

5.2.4. Frequency changers

Frequency changers (also known as converters or invertors) specially designed or prepared to supply motor stators (as defined under section 5.1.2(d) of this Supplement), or parts, components and sub-assemblies of such frequency changers having all of the following characteristics:

(a) A multiphase output of 600 to 2000 Hz;

(b) High stability (with frequency control better than 0.1%);

(c) Low harmonic distortion (less than 2%); and

(d) An efficiency of greater than 80%.

Explanatory Note: The items listed in this section 5.2 either come into direct contact with the UF_6 process gas or directly control the centrifuges and the passage of the gas from centrifuge to centrifuge and cascade to cascade. Materials resistant to corrosion by UF_6 include stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel.

5.3. Specially designed or prepared assemblies and components for use in gaseous diffusion enrichment

Introductory Note: In the gaseous diffusion method of uranium isotope separation, the main technological assembly is a special porous gaseous diffusion barrier, heat exchanger for cooling the gas (which is heated by the process of compression), seal valves and control valves, and pipelines. Inasmuch as gaseous diffusion technology

uses uranium hexafluoride (UF_6), all equipment, pipeline and instrumentation surfaces (that come in contact with the gas) must be made of materials that remain stable in contact with UF_6. A gaseous diffusion facility requires a number of these assemblies, so that quantities can provide an important indication of end use.

5.3.1. Gaseous diffusion barriers

(a) Specially designed or prepared thin, porous filters, with a pore size of 100–1,000 Å (angstroms), a thickness of 5 mm (0.2 in) or less, and for tubular forms, a diameter of 25 mm (1 in) or less, made of metallic, polymer or ceramic materials resistant to corrosion by UF_6, and

(b) Specially prepared compounds or powders for the manufacture of such filters. Such compounds and powders include nickel or alloys containing 60 percent or more nickel, aluminum oxide, or UF_6-resistant fully fluorinated hydrocarbon polymers having a purity of 99.9 percent or more, a particle size less than 10 microns, and a high degree of particle size uniformity, which are specially prepared for the manufacture of gaseous diffusion barriers.

5.3.2. Diffuser housings

Specially designed or prepared hermetically sealed cylindrical vessels greater than 300 mm (12 in) in diameter and greater than 900 mm (35 in) in length, or rectangular vessels of comparable dimensions, which have an inlet connection and two outlet connections all of which are greater than 50 mm (2 in) in diameter, for containing the gaseous diffusion barrier, made of or lined with UF_6-resistant materials and designed for horizontal or vertical installation.

5.3.3. Compressors and gas blowers

Specially designed or prepared axial, centrifugal, or positive displacement compressors, or gas blowers with a suction volume capacity of 1 m^3/min or more of UF_6, and with a discharge pressure of up to several hundred kPa (100 psi), designed for long-term operation in the UF_6 environment with or without an electrical motor of appropriate power, as well as separate assemblies of such compressors and gas blowers. These compressors and gas blowers have a pressure ratio between 2:1 and 6:1 and are made of, or lined with, materials resistant to UF_6.

5.3.4. Rotary shaft seals

Specially designed or prepared vacuum seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor or the gas blower rotor with the driver motor so as to ensure a reliable seal against in-leaking of air into the inner chamber of the compressor or gas blower which is filled with UF_6. Such seals are normally designed for a buffer gas in-leakage rate of less than 1000 cm^3/min (60 in^3/min).

5.3.5. Heat exchangers for cooling UF_6

Specially designed or prepared heat exchangers made of or lined with UF_6-resistant materials (except stainless steel) or with copper or any combination of those metals, and intended for a leakage pressure change rate of less than 10 Pa (0.0015 psi) per hour under a pressure difference of 100 kPa (15 psi).

5.4. Specially designed or prepared auxiliary systems, equipment and components for use in gaseous diffusion enrichment

Introductory Note: The auxiliary systems, equipment and components for gaseous diffusion enrichment plants are the systems of plant needed to feed UF_6 to the gaseous diffusion assembly, to link the individual assemblies to each other to form cascades (or stages) to allow for progressively higher enrichments and to extract the ''product'' and ''tails'' UF_6 from the diffusion cascades. Because of the high inertial properties of diffusion cascades, any interruption in their operation, and especially their shut-down, leads to serious consequences. Therefore, a strict and constant maintenance of vacuum in all technological systems, automatic protection from accidents, and precise automated regulation of the gas flow is of importance in a gaseous diffusion plant. All this leads to a need to equip the plant with a large number of special measuring, regulating and controlling systems. Normally UF_6 is evaporated from cylinders placed within autoclaves and is distributed in gaseous form to the entry point by way of cascade header pipework. The ''product'' and ''tails'' UF_6 gaseous streams flowing from exit points are passed by way of cascade header pipework to either cold traps or to compression stations where the UF_6 gas is liquefied prior to onward transfer into suitable containers for transportation or storage. Because a gaseous diffusion enrichment plant consists of a large number of gaseous diffusion assemblies arranged in cascades, there are many kilometers of cascade header pipework, incorporating thousands of welds with substantial amounts of repetition of layout. The equipment, components and piping systems are fabricated to very high vacuum and cleanliness standards.

5.4.1. Feed systems/product and tails withdrawal systems

Specially designed or prepared process systems, capable of operating at pressures of 300 kPa (45 psi) or less, including:

(a) Feed autoclaves (or systems), used for passing UF_6 to the gaseous diffusion cascades;

(b) Desublimers (or cold traps) used to remove UF_6 from diffusion cascades;

(c) Liquefaction stations where UF_6 gas from the cascade is compressed and cooled to form liquid UF_6;

(d) ''Product'' or ''tails'' stations used for transferring UF_6 into containers.

5.4.2. Header piping systems

Specially designed or prepared piping systems and header systems for handling UF_6 within the gaseous diffusion cascades. This piping network is normally of the ''double'' header system with each cell connected to each of the headers.

5.4.3. Vacuum systems

(a) Specially designed or prepared large vacuum manifolds, vacuum headers and vacuum pumps having a suction capacity of 5 m^3/min (175 ft^3/min) or more.

(b) Vacuum pumps specially designed for service in UF_6-bearing atmospheres made of, or lined with, aluminum, nickel, or alloys bearing more than 60% nickel. These pumps may be either rotary or positive, may have displacement and fluorocarbon seals, and may have special working fluids present.

5.4.4. Special shut-off and control valves

Specially designed or prepared manual or automated shut-off and control bellows valves made of UF_6-resistant materials with a diameter of 40 to 1500 mm (1.5 to 59 in) for installation in main and auxiliary systems of gaseous diffusion enrichment plants.

5.4.5. UF_6 mass spectrometers/ion sources

Specially designed or prepared magnetic or quadrupole mass spectrometers capable of taking ''on-line'' samples of feed, product or tails, from UF_6 gas streams and having all of the following characteristics:

(a) Unit resolution for atomic mass unit greater than 320;

(b) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(c) Electron bombardment ionization sources;

(d) Collector system suitable for isotopic analysis.

Explanatory Note: The items listed in this section 5.4 either come into direct contact with the UF_6 process gas or directly control the flow within the cascade. All surfaces which come into contact with the process gas are wholly made of, or lined with, UF_6-resistant materials. For the purposes of the sections in this Supplement relating to gaseous diffusion items, the materials resistant to corrosion by UF_6 include stainless steel, aluminum, aluminum alloys, aluminum oxide, nickel or alloys containing 60% or more nickel and UF_6-resistant fully fluorinated hydrocarbon polymers.

5.5. Specially designed or prepared systems, equipment and components for use in aerodynamic enrichment plants

Introductory Note: In aerodynamic enrichment processes, a mixture of gaseous UF_6 and light gas (hydrogen or helium) is compressed and then passed through separating elements wherein isotopic separation is accomplished by the generation of high centrifugal forces over a curved-wall geometry. Two processes of this type have been successfully developed: The separation nozzle process and the vortex tube process. For both processes the main components of a separation stage include cylindrical vessels housing the special separation elements (nozzles or vortex tubes), gas compressors and heat exchangers to remove the heat of compression. An aerodynamic plant requires a number of these stages, so that quantities can provide an important indication of end use. Since aerodynamic processes use UF_6, all equipment, pipeline and instrumentation surfaces (that come in contact with the gas) must be made of materials that remain stable in contact with UF_6.

Explanatory Note: The items listed in section 5.5 of this Supplement either come

into direct contact with the UF_6 process gas or directly control the flow within the cascade. All surfaces which come into contact with the process gas are wholly made of or protected by UF_6-resistant materials. For the purposes of the provisions of section 5.5 of this Supplement that relate to aerodynamic enrichment items, the materials resistant to corrosion by UF_6 include copper, stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel and UF_6-resistant fully fluorinated hydrocarbon polymers.

5.5.1. Separation nozzles

Specially designed or prepared separation nozzles and assemblies thereof. The separation nozzles consist of slit-shaped, curved channels having a radius of curvature less than 1 mm (typically 0.1 to 0.05 mm), resistant to corrosion by UF_6 and having a knife-edge within the nozzle that separates the gas flowing through the nozzle into two fractions.

5.5.2. Vortex tubes

Specially designed or prepared vortex tubes and assemblies thereof. The vortex tubes are cylindrical or tapered, made of or protected by materials resistant to corrosion by UF_6, having a diameter of between 0.5 cm and 4 cm, a length to diameter ratio of 20:1 or less and with one or more tangential inlets. The tubes may be equipped with nozzle-type appendages at either or both ends.

Explanatory Note: The feed gas enters the vortex tube tangentially at one end or through swirl vanes or at numerous tangential positions along the periphery of the tube.

5.5.3. Compressors and gas blowers

Specially designed or prepared axial, centrifugal or positive displacement compressors or gas blowers made of or protected by materials resistant to corrosion by UF_6 and with a suction volume capacity of 2 m^3/min or more of UF_6/carrier gas (hydrogen or helium) mixture.

Explanatory Note: These compressors and gas blowers typically have a pressure ratio between 1.2:1 and 6:1.

5.5.4. Rotary shaft seals

Specially designed or prepared rotary shaft seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor rotor or the gas blower rotor with the driver motor so as to ensure a reliable seal against out-leakage of process gas or in-leakage of air or seal gas into the inner chamber of the compressor or gas blower which is filled with a UF_6/carrier gas mixture.

5.5.5. Heat exchangers for gas cooling

Specially designed or prepared heat exchangers made of or protected by materials resistant to corrosion by UF_6.

5.5.6. Separation element housings

Specially designed or prepared separation element housings, made of or protected by materials resistant to corrosion by UF_6, for containing vortex tubes or separation nozzles.

Explanatory Note: These housings may be cylindrical vessels greater than 300 mm in diameter and greater than 900 mm in length, or may be rectangular vessels of comparable dimensions, and may be designed for horizontal or vertical installation.

5.5.7. Feed systems/product and tails withdrawal systems

Specially designed or prepared process systems or equipment for enrichment plants made of or protected by materials resistant to corrosion by UF_6, including:

(a) Feed autoclaves, ovens, or systems used for passing UF_6 to the enrichment process;

(b) Desublimers (or cold traps) used to remove UF_6 from the enrichment process for subsequent transfer upon heating;

(c) Solidification or liquefaction stations used to remove UF_6 from the enrichment process by compressing and converting UF_6 to a liquid or solid form;

(d) ''Product'' or ''tails'' stations used for transferring UF_6 into containers.

5.5.8. Header piping systems

Specially designed or prepared header piping systems, made of or protected by materials resistant to corrosion by UF_6, for handling UF_6 within the aerodynamic cascades. This piping network is normally of the ''double'' header design with each stage or group of stages connected to each of the headers.

5.5.9. Vacuum systems and pumps

(a) Specially designed or prepared vacuum systems having a suction capacity of 5 m^3/min or more, consisting of vacuum manifolds, vacuum headers and vacuum pumps, and designed for service in UF_6-bearing atmospheres;

(b) Vacuum pumps specially designed or prepared for service in UF_6-bearing atmospheres and made of or protected by materials resistant to corrosion by UF_6. These pumps may use fluorocarbon seals and special working fluids.

5.5.10. Special shut-off and control valves

Specially designed or prepared manual or automated shut-off and control bellows valves made of or protected by materials resistant to corrosion by UF_6 with a diameter of 40 to 1500 mm for installation in main and auxiliary systems of aerodynamic enrichment plants.

5.5.11. UF_6 mass spectrometers/ion sources

Specially designed or prepared magnetic or quadrupole mass spectrometers capable of taking ''on-line'' samples of feed, ''product'' or ''tails,'' from UF_6 gas streams and having all of the following characteristics:

(a) Unit resolution for mass greater than 320;

(b) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(c) Electron bombardment ionization sources;

(d) Collector system suitable for isotopic analysis.

5.5.12. UF_6/carrier gas separation systems

Specially designed or prepared process systems for separating UF_6 from carrier gas (hydrogen or helium).

Explanatory Note: These systems are designed to reduce the UF_6 content in the carrier gas to 1 ppm or less and may incorporate equipment such as:

(a) Cryogenic heat exchangers and cryoseparators capable of temperatures of -120 °C or less, or

(b) Cryogenic refrigeration units capable of temperatures of -120 °C or less, or

(c) Separation nozzle or vortex tube units for the separation of UF_6 from carrier gas, or

(d) UF_6 cold traps capable of temperatures of -20 °C or less.

5.6. Specially designed or prepared systems, equipment and components for use in chemical exchange or ion exchange enrichment plants

Introductory Note: The slight difference in mass between the isotopes of uranium causes small changes in chemical reaction equilibria that can be used as a basis for separation of the isotopes. Two processes have been successfully developed: Liquid-liquid chemical exchange and solid-liquid ion exchange. In the liquid-liquid chemical exchange process, immiscible liquid phases (aqueous and organic) are countercurrently contacted to give the cascading effect of thousands of separation stages. The aqueous phase consists of uranium chloride in hydrochloric acid solution; the organic phase consists of an extractant containing uranium chloride in an organic solvent. The contactors employed in the separation cascade can be liquid-liquid exchange columns (such as pulsed columns with sieve plates) or liquid centrifugal contactors. Chemical conversions (oxidation and reduction) are required at both ends of the separation cascade in order to provide for the reflux requirements at each end. A major design concern is to avoid contamination of the process streams with certain metal ions. Plastic, plastic-lined (including use of fluorocarbon polymers) and/or glass-lined columns and piping are therefore used. In the solid-liquid ion-exchange process, enrichment is accomplished by uranium adsorption/desorption on a special, very fast-acting, ion-exchange resin or adsorbent. A solution of uranium in hydrochloric acid and other chemical agents is passed through cylindrical enrichment columns containing packed beds of the adsorbent. For a continuous process, a reflux system is necessary to release the uranium from the adsorbent back into the liquid flow so that ''product'' and ''tails'' can be collected. This is accomplished with the use of suitable reduction/oxidation chemical agents that are fully regenerated in separate external circuits and that may be partially regenerated within the isotopic separation columns themselves. The presence of hot concentrated hydrochloric acid solutions in the process requires that the equipment be made of or protected by special corrosion-resistant materials.

5.6.1. Liquid-liquid exchange columns (Chemical exchange)

Countercurrent liquid-liquid exchange columns having mechanical power input (i.e., pulsed columns with sieve plates, reciprocating plate columns, and columns with internal turbine mixers), specially designed or prepared for uranium enrichment using the chemical exchange process. For corrosion resistance to concentrated hydrochloric acid solutions, these columns and their internals are made of or protected by suitable plastic materials (such as fluorocarbon polymers) or glass. The stage residence time of the columns is designed to be short (30 seconds or less).

5.6.2. Liquid-liquid centrifugal contactors (Chemical exchange)

Liquid-liquid centrifugal contactors specially designed or prepared for uranium enrichment using the chemical exchange process. Such contactors use rotation to achieve dispersion of the organic and aqueous streams and then centrifugal force to separate the phases. For corrosion resistance to concentrated hydrochloric acid solutions, the contactors are made of or are lined with suitable plastic materials (such as fluorocarbon polymers) or are lined with glass. The stage residence time of the centrifugal contactors is designed to be short (30 seconds or less).

5.6.3. Uranium reduction systems and equipment (Chemical exchange)

(a) Specially designed or prepared electrochemical reduction cells to reduce uranium from one valence state to another for uranium enrichment using the chemical exchange process. The cell materials in contact with process solutions must be corrosion resistant to concentrated hydrochloric acid solutions.

Explanatory Note: The cell cathodic compartment must be designed to prevent re-oxidation of uranium to its higher valence state. To keep the uranium in the cathodic compartment, the cell may have an impervious diaphragm membrane constructed of special cation exchange material. The cathode consists of a suitable solid conductor such as graphite.

(b) Specially designed or prepared systems at the product end of the cascade for taking the U^{4+} out of the organic stream, adjusting the acid concentration and feeding to the electrochemical reduction cells.

Explanatory Note: These systems consist of solvent extraction equipment for stripping the U^{4+} from the organic stream into an aqueous solution, evaporation and/or other equipment to accomplish solution pH adjustment and control, and pumps or other transfer devices for feeding to the electrochemical reduction cells. A major design concern is to avoid contamination of the aqueous stream with certain metal ions. Consequently, for those parts in contact with the process stream, the system is constructed of equipment made of or protected by suitable materials (such as glass, fluorocarbon polymers, polyphenyl sulfate, polyether sulfone, and resin-impregnated graphite).

5.6.4. Feed preparation systems (Chemical exchange)

Specially designed or prepared systems for producing high-purity uranium chloride feed solutions for chemical exchange uranium isotope separation plants.

Explanatory Note: These systems consist of dissolution, solvent extraction and/or ion exchange equipment for purification and electrolytic cells for reducing the uranium U^{6+} or U^{4+} to U^{3+}. These systems produce uranium chloride solutions having only a few parts per million of metallic impurities such as chromium, iron, vanadium, molybdenum and other bivalent or higher multi-valent cations. Materials of construction for portions of the system processing high-purity U^{3+} include glass, fluorocarbon polymers, polyphenyl sulfate or polyether sulfone plastic-lined and resin-impregnated graphite.

5.6.5. Uranium oxidation systems (Chemical exchange)

Specially designed or prepared systems for oxidation of U^{3+} to U^{4+} for return to the uranium isotope separation cascade in the chemical exchange enrichment process.

Explanatory Note: These systems may incorporate equipment such as:

(a) Equipment for contacting chlorine and oxygen with the aqueous effluent from the isotope separation equipment and extracting the resultant U^{4+} into the stripped organic stream returning from the product end of the cascade;

(b) Equipment that separates water from hydrochloric acid so that the water and the concentrated hydrochloric acid may be reintroduced to the process at the proper locations.

5.6.6. Fast-reacting ion exchange resins/adsorbents (ion exchange)

Fast-reacting ion-exchange resins or adsorbents specially designed or prepared for uranium enrichment using the ion exchange process, including porous macroreticular resins, and/or pellicular structures in which the active chemical exchange groups are limited to a coating on the surface of an inactive porous support structure, and other composite structures in any suitable form including particles or fibers. These ion exchange resins/adsorbents have diameters of 0.2 mm or less and must be chemically resistant to concentrated hydrochloric acid solutions as well as physically strong enough so as not to degrade in the exchange columns. The resins/adsorbents are specially designed to achieve very fast uranium isotope exchange kinetics (exchange rate half-time of less than 10 seconds) and are capable of operating at a temperature in the range of 100 °C to 200 °C.

5.6.7. Ion exchange columns (Ion exchange)

Cylindrical columns greater than 1,000 mm in diameter for containing and supporting packed beds of ion exchange resin/adsorbent, specially designed or prepared for uranium enrichment using the ion exchange process. These columns are made of or protected by materials (such as titanium or fluorocarbon plastics) resistant to corrosion by concentrated hydrochloric acid solutions and are capable of operating at a temperature in the range of 100 °C to 200 °C and pressures above 0.7 MPa (102 psia).

5.6.8. Ion exchange reflux systems (Ion exchange)

(a) Specially designed or prepared chemical or electrochemical reduction systems for regeneration of the chemical reducing agent(s) used in ion exchange uranium enrichment cascades.

(b) Specially designed or prepared chemical or electrochemical oxidation systems for regeneration of the chemical oxidizing agent(s) used in ion exchange uranium enrichment cascades.

Explanatory Note: The ion exchange enrichment process may use, for example, trivalent titanium (Ti^{3+}) as a reducing cation in which case the reduction system would regenerate Ti^{3+} by reducing Ti^{4+}. The process may use, for example, trivalent iron (Fe^{3+}) as an oxidant in which case the oxidation system would regenerate Fe^{3+} by oxidizing Fe^{2+}.

5.7. Specially designed or prepared systems, equipment and components for use in laser-based enrichment plants

Introductory Note: Present systems for enrichment processes using lasers fall into two categories: Those in which the process medium is atomic uranium vapor and those in which the process medium is the vapor of a uranium compound. Common nomenclature for such processes include: *First category*—atomic vapor laser isotope separation (AVLIS or SILVA); *second category*—molecular laser isotope separation (MLIS or MOLIS) and chemical reaction by isotope selective laser activation (CRISLA). The systems, equipment and components for laser enrichment plants embrace:

(a) Devices to feed uranium-metal vapor (for selective photo-ionization) or devices to feed the vapor of a uranium compound (for photo-dissociation or chemical activation);

(b) Devices to collect enriched and depleted uranium metal as ''product'' and ''tails'' in the first category, and devices to collect dissociated or reacted compounds as ''product'' and unaffected material as ''tails'' in the second category;

(c) Process laser systems to selectively excite the uranium-235 species; and

(d) Feed preparation and product conversion equipment. The complexity of the spectroscopy of uranium atoms and compounds may require incorporation of any of a number of available laser technologies.

Explanatory Note: Many of the items listed in section 5.7 of this Supplement come into direct contact with uranium metal vapor or liquid or with process gas consisting of UF_6 or a mixture of UF_6 and other gases. All surfaces that come into contact with the uranium or UF_6 are wholly made of or protected by corrosion-resistant materials. For the purposes of the provisions in section 5.7 of this Supplement that relate to laser-based enrichment items, the materials resistant to corrosion by the vapor or liquid of uranium metal or uranium alloys include yttria-coated graphite and tantalum; and the

materials resistant to corrosion by UF_6 include copper, stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel and UF_6-resistant fully fluorinated hydrocarbon polymers.

5.7.1. Uranium vaporization systems (AVLIS)

Specially designed or prepared uranium vaporization systems which contain high-power strip or scanning electron beam guns with a delivered power on the target of more than 2.5 kW/cm.

5.7.2. Liquid uranium metal handling systems (AVLIS)

Specially designed or prepared liquid metal handling systems for molten uranium or uranium alloys, consisting of crucibles and cooling equipment for the crucibles.

Explanatory Note: The crucibles and other parts of this system that come into contact with molten uranium or uranium alloys are made of or protected by materials of suitable corrosion and heat resistance. Suitable materials include tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof.

5.7.3. Uranium metal 'product' and 'tails' collector assemblies (AVLIS)

Specially designed or prepared ''product'' and ''tails'' collector assemblies for uranium metal in liquid or solid form.

Explanatory Note: Components for these assemblies are made of or protected by materials resistant to the heat and corrosion of uranium metal vapor or liquid (such as yttria-coated graphite or tantalum) and may include pipes, valves, fittings, ''gutters,'' feed-throughs, heat exchangers and collector plates for magnetic, electrostatic or other separation methods.

5.7.4. Separator module housings (AVLIS)

Specially designed or prepared cylindrical or rectangular vessels for containing the uranium metal vapor source, the electron beam gun, and the ''product'' and ''tails'' collectors.

Explanatory Note: These housings have multiplicity of ports for electrical and water feed-throughs, laser beam windows, vacuum pump connections and instrumentation diagnostics and monitoring. They have provisions for opening and closure to allow refurbishment of internal components.

5.7.5. Supersonic expansion nozzles (MLIS)

Specially designed or prepared supersonic expansion nozzles for cooling mixtures of UF_6 and carrier gas to 150 K or less and which are corrosion resistant to UF_6.

5.7.6. Uranium pentafluoride product collectors (MLIS)

Specially designed or prepared uranium pentafluoride (UF_5) solid product collectors consisting of filter, impact, or cyclone-type collectors, or combinations thereof, and which are corrosion resistant to the UF_5/UF_6 environment.

5.7.7. UF_6/carrier gas compressors (MLIS)

Specially designed or prepared compressors for UF_6/carrier gas mixtures, designed for long term operation in a UF_6 environment. The components of these compressors that come into contact with process gas are made of or protected by materials resistant to corrosion by UF_6.

5.7.8. Rotary shaft seals (MLIS)

Specially designed or prepared rotary shaft seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor rotor with the driver motor so as to ensure a reliable seal against out-leakage of process gas or in-leakage of air or seal gas into the inner chamber of the compressor which is filled with a UF_6/carrier gas mixture.

5.7.9. Fluorination systems (MLIS)

Specially designed or prepared systems for fluorinating UF_5 (solid) to UF_6 (gas).

Explanatory Note: These systems are designed to fluorinate the collected UF_5 powder to UF_6 for subsequent collection in product containers or for transfer as feed to MLIS units for additional enrichment. In one approach, the fluorination reaction may be accomplished within the isotope separation system to react and recover directly off the ''product'' collectors. In another approach, the UF_5 powder may be removed/transferred from the ''product'' collectors into a suitable reaction vessel (e.g., fluidized-bed reactor, screw reactor or flame tower) for fluorination. In both approaches, equipment for storage and transfer of fluorine (or other suitable fluorinating agents) and for collection and transfer of UF_6 are used.

5.7.10. UF_6 mass spectrometers/ion sources (MLIS)

Specially designed or prepared magnetic or quadrupole mass spectrometers capable of taking ''on-line'' samples of feed, ''product,'' or ''tails'' from UF_6 gas streams and having all of the following characteristics:

(a) Unit resolution for mass greater than 320;

(b) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(c) Electron bombardment ionization sources; and

(d) Collector system suitable for isotopic analysis.

5.7.11. Feed systems/product and tails withdrawal systems (MLIS)

Specially designed or prepared process systems or equipment for enrichment plants made of or protected by materials resistant to corrosion by UF_6, including:

(a) Feed autoclaves, ovens, or systems used for passing UF_6 to the enrichment process;

(b) Desublimers (or cold traps) used to remove UF_6 from the enrichment process for subsequent transfer upon heating;

(c) Solidification or liquefaction stations used to remove UF_6 from the enrichment process by compressing and converting UF_6 to a liquid or solid form;

(d) ''Product'' or ''tails'' stations used for transferring UF_6 into containers.

5.7.12. UF_6/carrier gas separation systems (MLIS)

Specially designed or prepared process systems for separating UF_6 from carrier gas. The carrier gas may be nitrogen, argon, or other gas.

Explanatory Note: These systems may incorporate equipment such as:

(a) Cryogenic heat exchangers or cryoseparators capable of temperatures of -120 °C or less, or

(b) Cryogenic refrigeration units capable of temperatures of -120 °C or less, or

(c) UF_6 cold traps capable of temperatures of -20 °C or less.

5.7.13. Laser systems (AVLIS, MLIS and CRISLA)

Lasers or laser systems specially designed or prepared for the separation of uranium isotopes.

Explanatory Note: The laser system for the AVLIS process usually consists of two lasers: A copper vapor laser and a dye laser. The laser system for MLIS usually consists of a CO_2 or excimer laser and a multi-pass optical cell with revolving mirrors at both ends. Lasers or laser systems for both processes require a spectrum frequency stabilizer for operation over extended periods of time.

5.8. Specially designed or prepared systems, equipment and components for use in plasma separation enrichment plants

Introductory Note: In the plasma separation process, a plasma of uranium ions passes through an electric field tuned to the U–235 ion resonance frequency so that they preferentially absorb energy and increase the diameter of their corkscrew-like orbits. Ions with a large-diameter path are trapped to produce a product enriched in U–235. The plasma, which is made by ionizing uranium vapor, is contained in a vacuum chamber with a high-strength magnetic field produced by a superconducting magnet. The main technological systems of the process include the uranium plasma generation system, the separator module with superconducting magnet and metal removal systems for the collection of ''product'' and ''tails.''

5.8.1. Microwave power sources and antennae

Specially designed or prepared microwave power sources and antennae for producing or accelerating ions and having the following characteristics: Greater than 30 GHz frequency and greater than 50 kW mean power output for ion production.

5.8.2. Ion excitation coils

Specially designed or prepared radio frequency ion excitation coils for frequencies of more than 100 kHz and capable of handling more than 40 kW mean power.

5.8.3. Uranium plasma generation systems

Specially designed or prepared systems for the generation of uranium plasma, which may contain high-power strip or scanning electron beam guns with a delivered power on the target of more than 2.5 kW/cm.

5.8.4. Liquid uranium metal handling systems

Specially designed or prepared liquid metal handling systems for molten uranium or uranium alloys, consisting of crucibles and cooling equipment for the crucibles, power

supply system, the ion source high-voltage power supply system, the vacuum system, and extensive chemical handling systems for recovery of product and cleaning/recycling of components.

5.9.1. Electromagnetic isotope separators

Electromagnetic isotope separators specially designed or prepared for the separation of uranium isotopes, and equipment and components therefor, including:

(a) *Ion sources:* Specially designed or prepared single or multiple uranium ion sources consisting of a vapor source, ionizer, and beam accelerator, constructed of suitable materials such as graphite, stainless steel, or copper, and capable of providing a total ion beam current of 50 mA or greater;

(b) *Ion collectors:* Collector plates consisting of two or more slits and pockets specially designed or prepared for collection of enriched and depleted uranium ion beams and constructed of suitable materials such as graphite or stainless steel;

(c) *Vacuum housings:* Specially designed or prepared vacuum housings for uranium electromagnetic separators, constructed of suitable non-magnetic materials such as stainless steel and designed for operation at pressures of 0.1 Pa or lower;

Explanatory Note: The housings are specially designed to contain the ion sources, collector plates and water-cooled liners and have provision for diffusion pump connections and opening and closure for removal and reinstallation of these components.

(d) *Magnet pole pieces:* Specially designed or prepared magnet pole pieces having a diameter greater than 2 m used to maintain a constant magnetic field within an electromagnetic isotope separator and to transfer the magnetic field between adjoining separators.

5.9.2. High voltage power supplies

Specially designed or prepared high-voltage power supplies for ion sources, having all of the following characteristics: capable of continuous operation, output voltage of 20,000 V or greater, output current of 1 A or greater, and voltage regulation of better than 0.01% over a time period of 8 hours.

5.9.3. Magnet power supplies

Specially designed or prepared high-power, direct current magnet power supplies having all of the following characteristics: capable of continuously producing a current output of 500 A or greater at a voltage of 100 V or greater and with a current or voltage regulation better than 0.01% over a period of 8 hours.

6. Plants for the production of heavy water, deuterium and deuterium compounds and equipment specially designed or prepared therefor

Introductory Note: Heavy water can be produced by a variety of processes. However, the two processes that have proven to be commercially viable are the water-hydrogen sulphide exchange process (GS process) and the ammonia-hydrogen exchange process. The GS process is based upon the exchange of hydrogen and deuterium between water and hydrogen sulphide within a series of towers which are operated with the top section cold and the bottom section hot. Water flows down the towers while the hydrogen sulphide gas circulates from the bottom to the top of the towers. A series of perforated trays are used to promote mixing between the gas and the water. Deuterium migrates to the water at low temperatures and to the hydrogen sulphide at high temperatures. Gas or water, enriched in deuterium, is removed from the first stage towers at the junction of the hot and cold sections and the process is repeated in subsequent stage towers. The product of the last stage, water enriched up to 30% in deuterium, is sent to a distillation unit to produce reactor grade heavy water, i.e., 99.75% deuterium oxide. The ammonia-hydrogen exchange process can extract deuterium from synthesis gas through contact with liquid ammonia in the presence of a catalyst. The synthesis gas is fed into exchange towers and to an ammonia converter. Inside the towers the gas flows from the bottom to the top while the liquid ammonia flows from the top to the bottom. The deuterium is stripped from the hydrogen in the synthesis gas and concentrated in the ammonia. The ammonia then flows into an ammonia cracker at the bottom of the tower while the gas flows into an ammonia converter at the top. Further enrichment takes place in subsequent stages and reactor grade heavy water is produced through final distillation. The synthesis gas feed can be provided by an ammonia plant that, in turn, can be constructed in association with a heavy water ammonia-hydrogen exchange plant. The ammonia-hydrogen exchange process can also use ordinary water as a feed source of deuterium.

Many of the key equipment items for heavy water production plants using GS or the ammonia-hydrogen exchange processes are common to several segments of the chemical and petroleum industries. This is particularly so for small plants using the GS process. However, few of the items are available ''off-the-shelf.'' The GS and ammonia-hydrogen processes require the handling of large quantities of flammable, corrosive and toxic fluids at elevated pressures. Accordingly, in establishing the design and operating standards for plants and equipment using these processes, careful attention to the materials selection and specifications is required to ensure long service life with high safety and reliability factors. The choice of scale is primarily a function of economics and need. Thus, most of the equipment items would be prepared according to the requirements of the customer. Finally, it should be noted that, in both the GS and the ammonia-hydrogen exchange processes, items of equipment which individually are not specially designed or prepared for heavy water production can be assembled into systems which are specially designed or prepared for producing heavy water. The catalyst production system used in the ammonia-hydrogen exchange process and water distillation systems used for the final concentration of heavy water to reactor-grade in either process are examples of such systems. The items of equipment which are specially designed or prepared for the production of heavy water utilizing either the water-hydrogen sulphide exchange process or the ammonia-hydrogen exchange process include the following:

6.1. Water-hydrogen sulphide exchange towers

Exchange towers fabricated from fine carbon steel (such as ASTM A516) with diameters of 6 m (20 ft) to 9 m (30 ft), capable of operating at pressures greater than or equal to 2 MPa (300 psi) and with a corrosion allowance of 6 mm or greater, specially designed or prepared for heavy water production utilizing the water-hydrogen sulphide exchange process.

6.2. Blowers and compressors

Single stage, low head (i.e., 0.2 MPa or 30 psi) centrifugal blowers or compressors for hydrogen-sulphide gas circulation (i.e., gas containing more than 70% H_2S) specially designed or prepared for heavy water production utilizing the water-hydrogen sulphide exchange process. These blowers or compressors have a throughput capacity greater than or equal to 56 m^3/second (120,000 SCFM) while operating at pressures greater than or equal to 1.8 MPa (260 psi) suction and have seals designed for wet H_2S service.

6.3. Ammonia-hydrogen exchange towers

Ammonia-hydrogen exchange towers greater than or equal to 35 m (114.3 ft) in height with diameters of 1.5 m (4.9 ft) to 2.5 m (8.2 ft) capable of operating at pressures greater than 15 MPa (2225 psi) specially designed or prepared for heavy water production utilizing the ammonia-hydrogen exchange process. These towers also have at least one flanged axial opening of the same diameter as the cylindrical part through which the tower internals can be inserted or withdrawn.

6.4. Tower internals and stage pumps

Tower internals and stage pumps specially designed or prepared for towers for heavy water production utilizing the ammonia-hydrogen exchange process. Tower internals include specially designed stage contactors which promote intimate gas/liquid contact. Stage pumps include specially designed submersible pumps for circulation of liquid ammonia within a contacting stage internal to the stage towers.

6.5. Ammonia crackers

Ammonia crackers with operating pressures greater than or equal to 3 MPa (450 psi) specially designed or prepared for heavy water production utilizing the ammonia-hydrogen exchange process.

6.6. Infrared absorption analyzers

Infrared absorption analyzers capable of ''on-line'' hydrogen/deuterium ratio analysis where deuterium concentrations are equal to or greater than 90%.

6.7. Catalytic burners

Catalytic burners for the conversion of enriched deuterium gas into heavy water

specially designed or prepared for heavy water production utilizing the ammonia-hydrogen exchange process.

7. Plants for the conversion of uranium and equipment specially designed or prepared therefor

Introductory Note: Uranium conversion plants and systems may perform one or more transformations from one uranium chemical species to another, including: conversion of uranium ore concentrates to UO_3, conversion of UO_3 to UO_2, conversion of uranium oxides to UF_4 or UF_6, conversion of UF_4 to UF_6, conversion of UF_6 to UF_4, conversion of UF_4 to uranium metal, and conversion of uranium fluorides to UO_2. Many of the key equipment items for uranium conversion plants are common to several segments of the chemical process industry. For example, the types of equipment employed in these processes may include: Furnaces, rotary kilns, fluidized bed reactors, flame tower reactors, liquid centrifuges, distillation columns and liquid-liquid extraction columns. However, few of the items are available ''off-the-shelf;'' most would be prepared according to the requirements and specifications of the customer. In some instances, special design and construction considerations are required to address the corrosive properties of some of the chemicals handled (HF, F_2, ClF_3, and uranium fluorides). Finally, it should be noted that, in all of the uranium conversion processes, items of equipment which individually are not specially designed or prepared for uranium conversion can be assembled into systems which are specially designed or prepared for use in uranium conversion.

7.1. Specially designed or prepared systems for the conversion of uranium ore concentrates to UO_3

Explanatory Note: Conversion of uranium ore concentrates to UO_3 can be performed by first dissolving the ore in nitric acid and extracting purified uranyl nitrate using a solvent such as tributyl phosphate. Next, the uranyl nitrate is converted to UO_3 either by concentration and denitration or by neutralization with gaseous ammonia to produce ammonium diuranate with subsequent filtering, drying, and calcining.

7.2. Specially designed or prepared systems for the conversion of UO_3 to UF_6

Explanatory Note: Conversion of UO_3 to UF_6 can be performed directly by fluorination. The process requires a source of fluorine gas or chlorine trifluoride.

7.3. Specially designed or prepared systems for the conversion of UO_3 to UO_2

Explanatory Note: Conversion of UO_3 to UO_2 can be performed through reduction of UO_3 with cracked ammonia gas or hydrogen.

7.4. Specially designed or prepared systems for the conversion of UO_2 to UF_4

Explanatory Note: Conversion of UO_2 to UF_4 can be performed by reacting UO_2 with hydrogen fluoride gas (HF) at 300–500 °C.

7.5. Specially designed or prepared systems for the conversion of UF_4 to UF_6

Explanatory Note: Conversion of UF_4 to UF_6 is performed by exothermic reaction with fluorine in a tower reactor. UF_6 is condensed from the hot effluent gases by passing the effluent stream through a cold trap cooled to −10 °C. The process requires a source of fluorine gas.

7.6. Specially designed or prepared systems for the conversion of UF_4 to U metal

Explanatory Note: Conversion of UF_4 to U metal is performed by reduction with magnesium (large batches) or calcium (small batches). The reaction is carried out at temperatures above the melting point of uranium (1130 °C).

7.7. Specially designed or prepared systems for the conversion of UF_6 to UO_2

Explanatory Note: Conversion of UF_6 to UO_2 can be performed by one of three processes. In the first, UF_6 is reduced and hydrolyzed to UO_2 using hydrogen and steam. In the second, UF_6 is hydrolyzed by solution in water, ammonia is added to precipitate ammonium diuranate, and the diuranate is reduced to UO_2 with hydrogen at 820 °C. In the third process, gaseous UF_6, CO_2, and NH_3 are combined in water, precipitating ammonium uranyl carbonate. The ammonium uranyl carbonate is combined with steam and hydrogen at 500–600 °C to yield UO_2. UF_6 to UO_2 conversion is often performed as the first stage of a fuel fabrication plant.

7.8 Specially designed or prepared systems for the conversion of UF_6 to UF_4

Explanatory Note: Conversion of UF_6 to UF_4 is performed by reduction with hydrogen.

PART 784—COMPLEMENTARY ACCESS

Sec.

784.1 Complementary access: General information on the purpose of complementary access, affected locations, and the role of BIS.
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Authority: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

§ 784.1 Complementary access: General information on the purpose of complementary access, affected locations, and the role of BIS.

(a) *Overview.* The Additional Protocol requires that the United States provide the IAEA with complementary access to locations specified in the U.S. declaration. The IAEA may request and be given complementary access to locations in the United States that are not included in the U.S. declaration as agreed to by the U.S. Government. The IAEA, upon request, will be granted complementary access to locations in the United States in accordance with the provisions of § 784.3 of the APR, which describes the scope and conduct of complementary access.

(b) *Purposes authorized under the APR.* The APR authorize the conduct of complementary access, at locations in the United States, for the following purposes.

(1) *Declared uranium hard-rock mines and ore beneficiation plants.* Complementary access may be conducted, on a selective basis, to verify the absence of undeclared nuclear material and nuclear related activities at reportable uranium hard-rock mines and ore beneficiation plants (see § 783.1(a)(3) of the APR).

(2) *Other locations specified in the U.S. declaration and locations requested by the IAEA that are not included in the U.S. declaration as agreed to by the U.S. Government.* Complementary access may be conducted at other locations specified in the U.S. declaration (i.e., locations required to submit reports to BIS pursuant to § 783.1(a)(1), (a)(2), or (b) of the APR), and locations requested by the IAEA and agreed to by the U.S. Government, to resolve questions relating to the correctness and completeness of the information provided in the U.S. declaration or to resolve inconsistencies relating to that information.

(i) In the event that the IAEA has a question about, or identifies an apparent inconsistency in, information contained in the U.S. declaration (e.g., information based on reports submitted to BIS by one of these locations, pursuant to § 783.1(a)(1), (a)(2), or (b) of the APR), the IAEA will provide the U.S. Government with an opportunity to clarify or resolve the question or inconsistency. The IAEA will not draw any conclusions about the question or inconsistency, or request complementary access to a location, until the U.S. Government has been provided with an opportunity to clarify or resolve the question or inconsistency, unless the IAEA considers that a delay in access would prejudice the purpose for which the access is sought.

(ii) Upon receipt of a request from the IAEA for clarification concerning information contained in the U.S. declaration, BIS will provide written notification to the U.S. location. The

U.S. location must provide BIS with all of the requested information to clarify or resolve the question or inconsistency raised by the IAEA. Unless informed otherwise by BIS, the U.S. location will have 15 calendar days from its receipt of written notification to submit the required forms to BIS (see the *Supplemental Information Report* requirements in § 783.1(d) of the APR).

(c) *Locations subject to complementary access.* All locations specified in the U.S. declaration and other locations requested by the IAEA and agreed to by the U.S. Government are subject to complementary access by the IAEA. In cases where access cannot be provided to locations specified by the IAEA, BIS may seek to provide complementary access to adjacent locations or to satisfy the purposes of complementary access (see paragraph (b) of this section) through other means.

(d) *Responsibilities of BIS.* As the lead U.S. Government agency and point of contact for organizing and facilitating complementary access pursuant to the APR, BIS will:

(1) Serve as the official U.S. Government host to the IAEA inspection team;

(2) Provide prior written notification to any location that is scheduled to undergo complementary access;

(3) Take appropriate action to obtain an administrative warrant in the event that a location does not consent to complementary access;

(4) Upon request of the location, dispatch an advance team, if time and other circumstances permit, to the location to provide administrative and logistical support for complementary access and to assist with preparation for such access;

(5) Accompany the IAEA Team throughout the duration of complementary access;

(6) Assist the IAEA Team with complementary access activities and ensure that each activity adheres to the provisions of the Additional Protocol and to the requirements of the APR and the Act, including the conditions of any warrant issued thereunder; and

(7) Assist in the negotiation and development of a location-specific subsidiary arrangement between the U.S. Government and the IAEA, if appropriate (see § 784.5 of the APR).

Note to § 784.1(d): BIS may invite representatives from other U.S. Government agencies to participate as members of the Advance and Host Teams for complementary access. The Host Team will not include employees of the Environmental Protection Agency, the Mine Safety and Health Administration, or the Occupational Safety and Health Administration of the Department of Labor.

§ 784.2 Obtaining consent or warrants to conduct complementary access.

(a) *Procedures for obtaining consent.* (1) For locations specified in the U.S. declaration and other locations specified by the IAEA, BIS will seek consent pursuant to IAEA complementary access requests. In instances where the owner, operator, occupant or agent in charge of a location does not consent to such complementary access, BIS will seek administrative warrants as provided by the Act.

(2) For locations specified by the IAEA where access cannot be provided, BIS may seek consent from an adjacent location pursuant to an IAEA complementary access request.

(b) *Who may give consent.* The owner, operator, occupant or agent in charge of a location may consent to complementary access. The individual providing consent on behalf of the location represents that he or she has the authority to make this decision.

(c) *Scope of consent.* (1) When the owner, operator, occupant, or agent in charge of a location consents to a complementary access request, he or she is agreeing to provide the IAEA Team with the same degree of access as that authorized under § 784.3 of the APR. This includes providing access for the IAEA Team and Host Team to any area of the location, any item on the location, and any records that are necessary to comply with the APR and allow the IAEA Team to accomplish the purpose of complementary access, as authorized under § 784.1(b)(1) or (b)(2) of the APR, except for the following:

(i) Information subject to the licensing jurisdiction of the Directorate of Defense Trade Controls (DDTC), U.S. Department of State, under the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120 through 130)—see § 784.3(b)(3) of the APR, which states that such access cannot be provided without prior U.S. Government authorization; and

(ii) Activities with direct national security significance to the United States, or locations or information associated with such activities.

(2) The Host Team Leader is responsible for determining whether or not the IAEA's request to obtain access to any area, building, or item, or to record or conduct the types of activities described in § 784.3 of the APR is consistent with the Additional Protocol and subsidiary arrangements to the Additional Protocol.

§ 784.3 Scope and conduct of complementary access.

(a) *General.* IAEA complementary access shall be limited to accomplishing only those purposes that are appropriate to the type of location, as indicated in § 784.1(b) of the APR and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of such purposes. No complementary access may take place without the presence of a U.S. Government Host Team. No information of direct national security significance shall be provided to the IAEA during complementary access.

(b) *Scope.* This paragraph describes complementary access activities that are authorized under the APR.

(1) *Complementary access activities.* Depending on the type of location accessed, the IAEA Team may:

(i) Perform visual observation of parts or areas of the location;

(ii) Utilize radiation detection and measurement devices;

(iii) Utilize non-destructive measurements and sampling;

(iv) Examine relevant records (i.e., records appropriate for the purpose of complementary access, as authorized under § 784.1(b) of the APR), except that the following records may not be inspected unless the Host Team leader, after receiving input from representatives of the location and consulting with other members of the Host Team, determines that such access is both appropriate and necessary to achieve the relevant purpose described in § 784.1(b)(1) or (b)(2) of the APR:

(A) Financial data (other than production data);

(B) Sales and marketing data (other than shipment data);

(C) Pricing data;

(D) Personnel data;

(E) Patent data;

(F) Data maintained for compliance with environmental or occupational health and safety regulations; or

(G) Research data (unless the data are reported on Form AP–3 or AP–4);

(v) Perform location-specific environmental sampling; and

Note to § 784.3(b)(1)(v): BIS will not seek access to a location for location-specific environmental sampling until the President reports to the appropriate congressional committees his determination to permit such sampling.

(vi) Utilize other objective measures which have been demonstrated to be technically feasible and the use of which have been agreed to by the United States (''objective measures,'' as used herein, means any verification techniques that would be appropriate

for achieving the official purpose of complementary access, both in terms of their effectiveness and limited intrusiveness).

(2) *Wide Area Environmental Sampling.* In certain cases, IAEA inspectors may collect environmental samples (e.g., air, water, vegetation, soil, smears), at a location specified by the IAEA, for the purpose of assisting the IAEA to draw conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area.

Note to § 784.3(b)(2): The IAEA will not seek such access until the use of wide-area environmental sampling and the procedural arrangements therefor have been approved by its Board of Governors and consultations have been held between the IAEA and the United States. BIS will not seek access to a location for wide-area sampling until the President reports to the appropriate congressional committees his determination to permit such sampling.

(3) *ITAR-controlled technology.* ITAR-controlled technology shall not be made available to the IAEA Team without prior U.S. Government authorization. The owner, operator, occupant, or agent in charge of the location being accessed is responsible for identifying any ITAR-controlled technology at the location to the Host Team as soon as practicable following the receipt of notification from BIS of complementary access (see § 784.4(a) of the APR).

(c) *Briefing.* Following the arrival of the IAEA Team and Host Team at a location subject to complementary access, and prior to the commencement of complementary access, representatives of the organization will provide the IAEA Team and Host Team with a briefing on the environmental, health, safety, and security regulations (e.g., regulations for protection of controlled environments within the location and for personal safety) that are applicable to the location and which must be observed. In addition, the organization's representatives may include in their briefing an overview of the location, the activities carried out at the location, and any administrative and logistical arrangements relevant to complementary access. The briefing may include the use of maps and other documentation deemed appropriate by the organization. The time spent for the briefing may not exceed one hour, and the content should be limited to that which relates to the purpose of complementary access. The briefing may also address any of the following:

(1) Areas, buildings, and structures specific to any activities relevant to complementary access;

(2) Administrative and logistical information;

(3) Updates/revisions to reports required under the APR;

(4) Introduction of key personnel at the location;

(5) Location-specific subsidiary arrangement, if applicable; and

(6) Proposed access plan to address the purpose of complementary access.

(d) *Visual access.* The IAEA Team may visually observe areas or parts of the location, as agreed by the Host Team Leader, after the Host Team Leader has consulted with the organization's representative for the location.

(e) *Records review.* The location must be prepared to provide the IAEA Team with access to all supporting materials and documentation used by the owner, operator, occupant, or agent in charge of the location to prepare reports required under the APR and to otherwise comply with the APR (see the records inspection and recordkeeping requirements in §§ 786.1 and 786.2 of the APR and paragraph (b) of this section, which describes the scope of complementary access activities authorized under the APR) and with appropriate accommodations in which the IAEA Team can review these supporting materials and documentation. Such access will be provided in appropriate formats (e.g., paper copies, electronic remote access by computer, microfilm, or microfiche) through the Host Team to the IAEA Team during the complementary access period or as otherwise agreed upon by the IAEA Team and Host Team Leader. If the owner, operator, occupant, or agent in charge of the location does not have access to records for activities that took place under previous ownership, the previous owner must make such records available to the Host Team.

(f) *Managed access.* As necessary, the Host Team will implement managed access measures (e.g., the removal of sensitive papers from office spaces and the shrouding of sensitive displays, stores, and equipment) to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, to protect proprietary or commercially sensitive information, or to protect activities of direct national security significance to the United States, including locations or information associated with such activities. If the IAEA Team is unable to fully achieve its inspection aims under the managed access measures in place, the Host Team will make every reasonable effort to provide alternative means to allow the IAEA Team to meet these aims, consistent with the purposes of complementary access (as described in § 784.1(b) of the APR) and the requirements of this section. If a location-specific subsidiary arrangement applies (see § 784.5(b) of the APR), the Host Team shall, in consultation with the owner, operator, occupant, or agent in charge of the location, implement managed access procedures consistent with the applicable location-specific subsidiary arrangement.

(g) *Hours of complementary access.* Consistent with the provisions of the Additional Protocol, the Host Team will ensure, to the extent possible, that each complementary access is commenced, conducted, and concluded during ordinary business hours, but no complementary access shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Environmental, health, safety, and security regulations and requirements.* In carrying out their activities, the IAEA Team and Host Team shall observe federal, state, and local environmental, health, safety, and security regulations and environmental, health, safety, and security requirements established at the location, including those for the protection of controlled environments within a location and for personal safety. To the extent practicable, any such regulations and requirements that may apply to the conduct of complementary access at the location should be set forth in the location-specific subsidiary arrangement (if any).

(i) *Host Team to accompany the IAEA Team.* The Host Team shall accompany the IAEA Team, during their complementary access at the location, in accordance with the provisions set forth in this part of the APR.

(j) *Scope of authorized communications by the IAEA Team.* (1) The United States shall permit and protect free communications between the IAEA Team and IAEA Headquarters and/or Regional Offices, including attended and unattended transmission of information generated by IAEA containment and/or surveillance or measurement devices. The IAEA Team shall have the right, through consultation with the Host Team, to make use of internationally established systems of direct communications.

(2) No document, photograph or other recorded medium, or sample relevant to complementary access may be removed or transmitted from the location by the IAEA Team without the prior consent of the Host Team.

(k) *IAEA activities, findings, and results related to complementary access.* (1) In accordance with the Additional Protocol, the IAEA shall inform the United States of:

(i) Any activities that took place in connection with complementary access

to a location in the United States, including any activities concerning questions or inconsistencies that the IAEA may have brought to the attention of the United States, within 60 calendar days of the time that the activities occurred; and

(ii) The findings or results of any activities that took place, including the findings and results of activities concerning questions or inconsistencies that the IAEA may have brought to the attention of the United States, within 30 calendar days of the time that such findings or results were reached by the IAEA.

(2) BIS will provide the results of complementary access to the owner, operator, occupant, or agent in charge of the inspected location to the extent practicable.

§ 784.4 Notification, duration and frequency of complementary access.

(a) *Complementary access notification.* Complementary access will be provided only upon the issuance of a written notice by BIS to the owner, operator, occupant or agent in charge of the premises to be accessed. If BIS is unable to provide written notification to the owner, operator, or agent in charge, BIS may post a notice prominently at the location to be accessed.

(1) *Content of notice.* (i) Pertinent information furnished by the IAEA. The notice shall include all appropriate information provided by the IAEA to the United States Government concerning:

(A) The purpose of complementary access;

(B) The basis for the selection of the location for complementary access;

(C) The activities that will be carried out during complementary access;

(D) The time and date that complementary access is expected to begin and its anticipated duration; and

(E) The names and titles of the IAEA inspectors who will participate in complementary access.

(ii) *Request for location's consent to complementary access.* The complementary access notification from BIS will request that the location inform BIS whether or not it will consent to complementary access. If a location does not agree to provide consent to complementary access within four hours of its receipt of the complementary access notification, BIS will seek an administrative warrant as provided in § 784.2(a)(1).

(iii) *Availability of advance team from BIS.* An advance team from BIS will be available to assist the location in preparing for complementary access. If the complementary access is a 24-hour advance notice, then the availability of an advance team may be limited. The location requesting advance team assistance will not be required to reimburse the U.S. Government for any costs associated with these activities. The location (in cooperation with the advance team, if available) will make preparations for complementary access, including the identification of any ITAR-controlled technology and/or national security information at the location (see § 784.3(b)(3) of the APR).

(2) *Notification procedures.* The following table sets forth the notification procedures for complementary access.

TABLE TO § 784.4(A)(2)

Activity	Agency action	Location action
IAEA notification of complementary access.	BIS will transmit complementary access notification via facsimile to the owner, operator, occupant, or agent in charge of a location to ascertain whether or not the location: (1) Grants consent to complementary access; and (2) Requests BIS advance team support (subject to availability) in preparing for complementary access. If the location does not inform BIS of its consent to complementary access, within 4 hours of the time it receives notification from BIS, BIS will seek an administrative warrant.	Location must inform BIS, within 4 hours of its receipt of complementary access notification, whether or not it: (1) Grants consent to complementary access; and (2) Requests BIS advance team support (subject to availability) to prepare for complementary access. Location not required to reimburse U.S. Government for assistance from the BIS advance team.
Preparation for complementary access.	If a BIS advance team has been requested and is available, it will arrive at the location to be accessed and assist the location in making logistical and administrative preparations for complementary access.	The location will engage in activities that will prepare the location for complementary access (e.g., identifying any ITAR-controlled technology or national security information at the location), either singularly or in cooperation with a BIS advance team if one has been requested and is available.

(3) *Timing of notification.* In accordance with the Additional Protocol, the IAEA shall notify the United States Government of a complementary access request not less than 24 hours prior to the arrival of the IAEA Team at the location. BIS will provide written notice to the owner, operator, occupant or agent in charge of the location as soon as possible after BIS has received notification from the IAEA.

(b) *Duration of complementary access.* The duration of complementary access will depend upon the nature of the complementary access request and the activities that will be conducted at the location. (See § 784.3(b) of the APR for a description of the types of complementary access activities authorized under the APR.)

§ 784.5 Subsidiary arrangements.

(a) *General subsidiary arrangement.* The United States Government may conclude a general subsidiary arrangement with the IAEA that governs complementary access activities, irrespective of the location (i.e., an arrangement that is not location-specific).

(b) *Location-specific subsidiary arrangement.* (1) *Purpose.* If requested by the location or deemed necessary by the U.S. Government, the U.S. Government will negotiate a location-specific subsidiary arrangement with the IAEA. The purpose of such an arrangement is to establish procedures for conducting managed access at a specific declared location. If the location requests, it may participate in preparations for the negotiation of a location-specific subsidiary arrangement with the IAEA and may observe the negotiations to the maximum extent practicable. The existence of a location-specific subsidiary arrangement does not in any way limit the right of the

owner, operator, occupant, or agent in charge of the location to withhold consent to a request for complementary access.

(2) *Format and content.* The form and content of a location-specific subsidiary arrangement will be determined by the IAEA and the U.S. Government, in consultation with the location, on a case-by-case basis.

§ 784.6 Post complementary access activities.

Upon receiving the IAEA's final report on complementary access, BIS will forward a copy of the report to the location for its review, in accordance with § 784.3(k)(2) of the APR. Locations may submit comments concerning the IAEA's final report to BIS, and BIS will consider them, as appropriate, when preparing its comments to the IAEA on the final report. BIS also will send locations a post complementary access letter detailing the issues that require follow-up action (see, for example, the *Amended Report* requirements in § 783.2(d) of the APR).

PART 785—ENFORCEMENT

Sec.

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Authority: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

§ 785.1 Scope and definitions.

(a) *Scope.* This Part 785 describes the sanctions that apply to violations of the Act and the APR. It also establishes detailed administrative procedures for certain violations of the Act. Violations for which the statutory basis is the Act are set forth in § 785.2 of the APR. BIS investigates these violations, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and initiates and resolves proceedings. The administrative procedures applicable to these violations are described in §§ 785.3 through 785.19 of the APR.

(b) *Definitions.* The following are definitions of terms as used only in Part 785 of the APR. For definitions of terms applicable to Parts 781 through 786 of the APR, unless otherwise noted in this paragraph or elsewhere in the APR, see Part 781 of the APR.

The Act. The U.S. Additional Protocol Implementation Act of 2006 (Public Law 109–401, 120 Stat. 2726 (December 18, 2006)).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

Recommended decision. A decision of the administrative law judge in proceedings involving violations of Part 785 that is subject to review by the Secretary of Commerce, or a designated United States Government official.

Report. For the purposes of Part 785 of the APR, the term ''report'' means any report required under Parts 783 through 786 of the APR.

Respondent. Any person named as the subject of a letter of intent to charge, a Notice of Violation and Assessment (NOVA), or order.

Under Secretary, Bureau of Industry and Security. The Under Secretary, Bureau of Industry and Security, United States Department of Commerce.

§ 785.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations*—(1) *Refusal to permit entry or access.* No person may willfully fail or refuse to permit entry or access, or willfully disrupt, delay or otherwise impede complementary access, or an entry in connection with complementary access, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse to do any of the following:

(i) Establish or maintain any record required by the Act or the APR;

(ii) Submit any report, notice, or other information to the United States Government in accordance with the Act or the APR; or

(iii) Permit access to or copying of any record by the United States Government that is related to a person's obligations under the Act or the APR.

(b) *Civil penalties*—(1) *Civil penalty for refusal to permit entry or access.* Any person that is determined to have willfully failed or refused to permit entry or access, or to have willfully disrupted, delayed or otherwise impeded an authorized complementary access, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, submit any report or other information required by the Act or the APR, or permit access to or copying of any record related to a person's obligations under the Act or the APR, as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation.

(c) *Criminal penalty.* Any person that is determined to have violated the Act by willfully failing or refusing to permit entry or access authorized by the Act; by willfully disrupting, delaying or otherwise impeding complementary access authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, submit any required report or other information, or permit access to or copying of any record related to a person's obligations under the Act or the APR, as set forth in paragraph (a) of this section, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than five years, or both.

§ 785.3 Initiation of administrative proceedings.

(a) *Issuance of a Notice of Violation and Assessment (NOVA).* Prior to the initiation of an administrative proceeding through issuance of a NOVA, the Bureau of Industry and Security will issue a letter of intent to charge. The letter of intent to charge will advise a respondent that BIS has conducted an investigation. The letter will give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the letter of intent to charge. If the

respondent does not contact BIS in the time period specified in the letter of intent to charge, the Director of the Office of Export Enforcement, or such other Department of Commerce representative designated by the Assistant Secretary for Export Enforcement, may initiate an administrative enforcement proceeding under this § 785.3 by issuing a NOVA.

(b) *Content of a NOVA.* The NOVA shall constitute a formal complaint and will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the maximum amount of the civil penalty that could be assessed. The NOVA also will inform the respondent of the requirement to request a hearing pursuant to § 785.4 of the APR.

(c) *Service of a NOVA.* Service of the NOVA shall be made by certified mail or courier delivery with signed acknowledgment of receipt. The date of signed acknowledgment of receipt shall be the effective date of service of the NOVA. One copy of each paper shall be provided to each party in the delivery. BIS files the NOVA with the Administrative Law Judge (ALJ) at the same time that it is sent to the respondent. The ALJ, in turn, will place the case on its docket and will notify both the respondent and BIS of the docket information.

§ 785.4 Request for hearing and answer.

(a) *Deadline for answering the NOVA.* If the respondent wishes to contest the NOVA issued by BIS, the respondent must submit a written request for a hearing to BIS within 15 business days from the date of service of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 calendar days from the date of the request for hearing. The request for a hearing and the respondent's answer to the NOVA must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 785.6 of the APR.

(b) *Content of respondent's answer.* The respondent's answer must be responsive to the NOVA and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and this will serve as a denial. Failure to deny or controvert a particular allegation will be deemed to be an admission of that allegation. The answer must also set forth any additional or new matter that the respondent contends will support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed to be waived, and evidence supporting that defense or partial defense may be refused, except for good cause shown.

(c) *English required.* The request for hearing, the answer to the NOVA, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times prescribed in paragraph (a) of this section constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA. If no hearing is requested and no answer is provided, a final order will be signed by the Secretary of Commerce, or by a designated United States Government official, and will constitute final agency action in the case.

§ 785.5 Representation.

An individual respondent may appear, in person, or be represented by a duly authorized officer or employee. A partner may appear on behalf of a partnership, or a duly authorized officer or employee of a corporation may appear on behalf of the corporation. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

§ 785.6 Filing and service of papers other than the Notice of Violation and Assessment (NOVA).

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to ''Additional Protocol Administrative Enforcement Proceedings,'' at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States certified mail, by express or equivalent parcel delivery service, via facsimile, or by hand delivery is acceptable. Filing from a foreign country shall be by airmail, via facsimile, or by express or equivalent parcel delivery service. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States certified mail, by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. Service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–3839, Washington, DC 20230, or sent via facsimile to (202) 482–0085. Service on a respondent shall be to the address to which the NOVA was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period is to be included in the computation unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure). In such instance, the period runs until the end of the next day that is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less—there is no cap on the period of time to which this exclusion applies, whenever the period of time prescribed or allowed by this part is computed in business days, rather than calendar days.

§ 785.7 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is

no genuine issue as to any material fact and the party is entitled to summary decision as a matter of law.

§ 785.8 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including Confidential Business Information (CBI) as defined by the Act.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 30 calendar days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ at least 5 business days before the scheduled date of the hearing. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 business days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 785.9 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas to any person requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with a subpoena. Any failure to obey an order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ may be served by any of the methods set forth in § 785.6(b) of the APR.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 business days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 785.10 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties with the opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 785.11 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 785.12 Hearings.

(a) *Scheduling.* Upon receipt of a valid request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 calendar days from the date of receipt of a request for a hearing, schedule a hearing. All hearings will be held in Washington, DC, unless the ALJ determines, for good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both want a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or report as evidence, provided that any affidavits or reports have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 785.13 Procedural stipulations.

Unless otherwise ordered and subject to § 785.14 of the APR, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this Part.

§ 785.14 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 calendar days, and the requirement that a final agency decision be made within 60 calendar days, may not be modified.

§ 785.15 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and orders and settlements.

§ 785.16 Decisions.

(a) *Recommended decision and order.* After considering the entire record in the case, the ALJ will issue a recommended decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, and such other matters as justice may require.

(c) *Referral of recommended decision and order.* The ALJ shall immediately issue and serve the recommended decision (and order, if appropriate) to the Office of Chief Counsel, at the address in § 785.6(b) of the APR, and to the respondent, by courier delivery or overnight mail. The recommended decision and order will also be referred to the head of the designated executive agency for final decision and order.

(d) *Final decision and order.* The recommended decision and order shall become the final agency decision and order unless, within 60 calendar days, the Secretary of Commerce, or a designated United States Government official, modifies or vacates it, or unless an appeal has been filed pursuant to paragraph (e) of this section.

(e) *Appeals.* The respondent may appeal the final agency decision within 30 calendar days after the date of certification. Petitions for appeal may be filed in the Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the district in which the violation occurred.

§ 785.17 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case prior to issuance of a NOVA, a settlement proposal consisting of a settlement agreement and order will be submitted to the Assistant Secretary for Export Enforcement for approval and signature. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed as though no settlement proposal has been made. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and no action will be required by the ALJ.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Assistant Secretary for Export Enforcement, forwarding a proposed settlement agreement and order, which the Assistant Secretary will approve and sign. If a NOVA has been filed, the Office of Chief Counsel will send a copy of the settlement proposal to the ALJ.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this Part. The government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed, absent a showing of good cause. Appeals and requests to reopen settled cases must be submitted to the Assistant Secretary for Export Enforcement within 30 calendar

days of the execution of a settlement agreement.

§ 785.18 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 785.16 of the APR, the decision of the ALJ and such submissions as are provided for under § 785.16 of the APR will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents*—(1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be displayed on the BIS Freedom of Information Act (FOIA) Web site, at *http://www.bis.doc.gov/foia,* which is maintained by the Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce. The Office of Administration does not maintain a separate inspection facility. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

§ 785.19 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under the APR. This suit will include a claim for interest at current prevailing rates from the date of expiration of the 60-day period referred to in § 785.16(d), or the date of the final order, as appropriate.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 785.20 Reporting a violation.

If a person learns that a violation of the Additional Protocol, the Act, or the APR has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–4520, Washington, DC 20230; Tel: (202) 482–1208; Facsimile: (202) 482–0964.

PART 786—RECORDS AND RECORDKEEPING

Sec.

786.1 Inspection of records.
786.2 Recordkeeping.
786.3 Destruction or disposal of records.

Authority: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109–401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101–8181); Executive Order 13458 (February 4, 2008).

§ 786.1 Inspection of records.

Upon request by BIS, you must permit access to and copying of any record relating to compliance with the requirements of the APR. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record. Copies may be necessary to facilitate IAEA Team review of documents during complementary access. The IAEA Team may not remove these documents from the location without BIS authorization (see § 784.3(j)(2) of the APR).

§ 786.2 Recordkeeping.

(a) *Requirements.* Each person and location required to submit a report or correspondence under Parts 782 through 784 of the APR must retain all supporting materials and documentation used to prepare such report or correspondence.

(b) *Three year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for three years from the due date of the applicable report or for three years from the date of submission of the applicable report, whichever is later. Due dates for reports and correspondence are indicated in Parts 782 through 784 of the APR.

(c) *Location of records.* Records retained under this section must be maintained at the location or must be accessible at the location for purposes of complementary access at the location by IAEA Teams.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records, provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this Part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other

information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

§ 786.3 Destruction or disposal of records.

If BIS or any other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

PARTS 787–799—[RESERVED]

Dated: October 21, 2008.

Christopher R. Wall,

Assistant Secretary, for Export Administration.

[FR Doc. E8–25559 Filed 10–30–08; 8:45 am]

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Federal Register

Friday,
October 31, 2008

Part IV

Department of Homeland Security

Coast Guard

46 CFR Parts 32, 50, 52, et al.
Review and Update of Standards for Marine Equipment; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 32, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 76, 92, 110, 111, 112, 113, 162, 170, 175, 176, 177, 179, 181, 182, 183, 185

[Docket No. USCG–2003–16630]

RIN 1625–AA83

Review and Update of Standards for Marine Equipment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its rules relating to standards for marine equipment and updates the incorporation in those rules of references to national and international safety standards. This rule is part of an ongoing effort for regulatory review and reform that increases the focus on results, decreases the focus on process, and expands compliance options for the regulated public.

DATES: This final rule is effective December 1, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on December 1, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–16630 and are available for inspection or copying at 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. You may also find this docket on the Internet at *http://www.regulations.gov/*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Thane Gilman, Project Manager, Office of Design and Engineering Standards (CG–521), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–372–1383. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Acronyms

ABS American Bureau of Shipping
ABYC American Boat and Yacht Council
AGA American Gas Association
ANSI American National Standards Institute
API American Petroleum Institute
ASME American Society of Mechanical Engineers
ASTM American Standards for Testing and Materials
CGA Compressed Gas Association
CNG Compressed Natural Gas
EJMA Expansion Joint Manufacturers Association, Inc.
FCI Fluid controls Institute, Inc.
IEC International Electrotechnical Commission
IEEE Institute of Electrical and Electronic Engineers
IMO International Maritime Organization
ISA Instrument Society of America
ISO International Organization for Standardization
LPG Liquid Petroleum Gas
MAWP Maximum Allowable Working Pressure
MSC Marine Safety Center
MSS Manufacturers Standardization Society of the Valve and Fitting Industry, Inc.
NARA National Archives and Records Administration
NAVSEA Naval Sea Systems Command
NEC National Electric Code
NEMA National Electrical Manufacturers Association
NEPA National Environmental Policy Act of 1969
NFPA National Fire Protection Association
NPFC Naval Publications and Forms Center
NPRM Notice of Proposed Rulemaking
NPS Nominal Pipe Size
NTTAA National Technology Transfer and Advancement Act
PCBs Polychloride biphenyls
SAE Society of Automotive Engineers
SNPRM Supplemental Notice of Proposed Rulemaking
SOLAS Safety of Life At Sea
UL Underwriters Laboratories, Inc.

II. Regulatory History

On June 30, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Review and Update of Standards for Marine Equipment'' in the **Federal Register** (69 FR 39742). We received 13 letters commenting on the proposed rule. Two commenters suggested we hold a public meeting to discuss changes they recommended. However, as those recommendations are beyond the scope of this rulemaking, we did not adopt this suggestion and no public meeting was held.

In numerous cases, the exact designation of standards that we incorporate by reference has changed between the NPRM and this final rule. These changes have been made to bring our regulatory text into compliance with Office of the Federal Register technical requirements governing incorporations by reference, and are intended to help the public better identify exactly which standards we intend to enforce. They are not intended to be substantive changes and receive no further discussion.

Other changes are relatively few in number and may or may not be substantive. They are discussed in ''IV. Discussion of Comments and Changes.'' Overall, the changes we have made since publishing the NPRM are either non-substantive or are the logical outgrowth of the NPRM. A supplemental notice of proposed rulemaking (SNPRM) is, therefore, unnecessary, and would delay completion of this rulemaking. Thus, we find good cause under 5 U.S.C. 552(b)(B) to proceed with publication of this final rule without an SNPRM.

III. Background and Purpose

The Coast Guard has actively participated in the development of industry standards of safety for marine equipment at the International Maritime Organization (IMO), the International Organization for Standardization (ISO), the ASTM International, and other standards-setting bodies that belong to the American National Standards Institute (ANSI).

This rule is part of an ongoing effort for regulatory review and reform, with the goals of: (1) Updating references to incorporated standards that have been modified; (2) removing obsolete rules; (3) making our regulations performance-based; and (4) expanding efforts to promote consensual rulemaking.

IV. Discussion of Comments and Changes

The NPRM discusses the changes made by this rule in detail. In general, our changes fall into eight categories:

(1) Revisions to authority citations.

(2) Correction of prior inadvertent errors or deletions.

(3) Deletion of obsolete or superfluous material.

(4) Adoption of The International System of Units (metric) measurements.

(5) Reduction of regulatory thresholds.
(6) Stylistic revisions.
(7) Updating cross references.
(8) Updating references to industry standards.

This rule affects only inspected commercial vessels. It imposes no new requirements and, therefore, requires no phase-in period.

The Coast Guard received 13 letters commenting on the NPRM. Many of the comments suggested changes that go beyond the scope of this rulemaking, including the adoption of newer industry standards. This rulemaking is designed to update references to industry standards, but is not intended to introduce new standards that would change the substance of our regulations. We have not adopted any of these suggestions and, in most cases, do not discuss their merits in this document. Nevertheless, we appreciate these comments and may consider them in the future, should we ever undertake a more substantive revision of our rules.

Four commenters stated that two major documents developed by the American Petroleum Institute (API), API RP–14F and API RP–14FZ, were not recognized when creating these rules and merit consideration. We did not consider this recommendation because it is beyond the scope of this rulemaking.

Two commenters strongly recommended that the Coast Guard hold a public meeting to identify cable designs, their functional attributes, and their ultimate recognition as acceptable designs for the marine industry. As previously discussed, these suggestions are beyond the scope of this rulemaking and we did not adopt this recommendation.

One commenter stated that, because this rulemaking is applicable to low voltage power control and medium voltage insulated conductor constructions, the optional insulation systems and armor designs available for these cables should be discussed during this revision cycle to serve the purpose of updating and including state-of-the-art technology. This is beyond the scope of this rulemaking, but we point out that new state-of-the-art technologies can be submitted for equivalency review.

One commenter stated that the name of ASTM (American Society for Testing and Materials) has changed to American Standards for Testing and Materials (ASTM) International. The actual name is now ASTM International, and we have changed the text accordingly.

One commenter suggested that we review the wording of § 56.10–1(b). We have reworded the paragraph to incorporate what we believe to be the commenter's concern.

One commenter suggested that we incorporate a reference to ''similar junction equipment'' in § 56.10–5(c)(6). We have revised the paragraph accordingly.

One commenter suggested a minor rewording of § 56.25–5, which we have incorporated.

One commenter asked us to remove the reference to threaded studs in § 56.25–20(d), saying that a stud is an unthreaded pin used in guiding the application. We disagree and have retained the language used in the NPRM. Studs have threads similar to bolts, but have no heads.

One commenter asked us to make minor revisions to the wording of § 56.25–20(e). Because our intention is to reproduce ASME–B31.1, part 108.5.1, we decline this request and have retained the language of the NPRM.

One commenter asked us to replace, in § 56.30–20(d), the phrase ''No pipe * * *'' with ''No steel pipe * * *.'' We do not think this change is necessary, but have revised the language in the NPRM to omit a reference to ANSI standard weight.

One commenter requested minor revisions to § 56.60–3(b). Because our intention is to reproduce ASME–B31.1 part 124.2.C, we decline this request and have retained the language of the NPRM.

One commenter asked us to revise the language of § 92.15–10(d). The commenter's proposed revision was identical to the text in the NPRM. However, we have revised the paragraph to include a reference to 46 CFR 97.80–1.

Three commenters requested that in § 110.10–1, we replace the reference to IEEE Std 45–1998 with a reference to a newer standard, IEEE Std 45–2002. A fourth commenter asked us to add several International Electrotechnical Commission (IEC) standards to this section. These changes are outside the scope of the rulemaking. Note that in some cases, the additional standards these commenters suggest need not be made explicit in the regulatory text; compliance with those standards is already required by the standards that we do list.

One commenter asked us to amend § 111.01–9 to make it clear that there is no exact correlation between NEMA types and IEC IP types. We have retained the NPRM version of this section, which does not correlate the NEMA and IEC types, but provides the minimum NEMA and IEC IP protection required. The rule provides two separate, independent schemes for achieving protection. The user will follow either NEMA or IEC IP types.

Three commenters requested that we change the title of § 111.05–7 and substitute ''All cables shall be installed in accordance with requirements of section 25 of IEEE 45–2002'' for the NPRM text, because the section should apply not only to armored cable but to all cable, thus providing the total installation requirements. We did not accept this recommendation because it is outside the scope of this rulemaking.

Four commenters pointed out that the reference in § 111.30–19(a)(1) to ''Section 7.10'' is to IEEE 45–1998, not the newer IEEE 45–2002 revision. They asked us to incorporate the 2002 standards in order to provide a higher level of safety. This recommendation is outside the scope of this rulemaking.

One commenter asked us to change the minimum cable size in § 111.30–19(b)(3) from 14 AWG to 15 AWG, to be on par with IEC. This recommendation is outside the scope of this rulemaking.

Three commenters suggested that the inclusion of § 111.60–1(c) as it appeared in the NPRM is redundant, because T/N cable construction is covered in IEEE 1580, which is referred to in paragraph (a) of the section. We agree and have deleted the NPRM language of paragraph (c).

Three commenters pointed out that § 111.60–1(d), as it appeared in the NPRM, incorrectly referenced IEEE Std 45, which does not provide cable construction data. We agree that the correct reference is to IEEE 1580 and have revised this paragraph accordingly.

One commenter asked us to amend § 111.60–2 to require the use of continuous corrugated metal clad armor or installation within continuous metal piping. This recommendation is outside the scope of this rulemaking.

One commenter stated that, in § 111.60–2, the reference to IEC 60332–2 is incorrect and should be changed to IEC 60332–3–23. We agree that the reference in the NPRM is incorrect, but have corrected the reference to read IEC 60332–3–22. The same commenter also asked us to delete the reference in this section to ANSI/UL 1581 test VW–1, on the grounds that it is inferior to the other listed standards in evaluating flame propagation behavior of completed cable assemblies. This recommendation is outside the scope of this rulemaking.

Two commenters asked us to amend § 111.60–3 so that all cable to be installed as marine shipboard cable must meet the performance requirements in Table 24 of IEEE 45. We have retained the NPRM language. Table 24 of IEEE Std 45–2002 is meant for

cable application, not cable performance requirements. Table 24 of IEEE Std 45–2002 does not apply in whole to each cable construction standard recognized in § 111.60–1 of this subpart and is not applicable to this section.

Three commenters asked us to replace the NPRM's ''must meet'' in § 111.60–3(a)(3) with ''must be applied in accordance with,'' for better clarity as to the correct ampacity. We agree and have changed the language accordingly.

Three commenters asked us to replace the NPRM's ''be derated according to'' in § 111.60–3(b)(1) with ''be applied in accordance with.'' We agree and have changed that language accordingly. However, we disagree with their additional comment that the reference in paragraph (b)(1) to Note 6 should be deleted because it requires no additional derating. We have retained the reference as Note 6 provides for additional derating of cables when the cable is double banked.

One commenter suggested the use of ''clause'' instead of ''paragraph'' in § 111.60–3(b)(2) to conform to IEC usage. We have made the requested change here and throughout subpart 111.60.

Three commenters asked us to remove the exception in § 111.60–5(a)(1) for section 25.11 of IEEE Std 45, saying the exception is not justified technically and that its removal would be consistent with § 111.60–19. We have retained the exception. Section 111.60–19 explicitly states one area where cable splicing is allowed and is only applicable to hazardous locations; splicing is only allowed in intrinsically safe locations. These locations, by definition, are low voltage applications.

Three commenters asked us to broaden § 111.60–5(a)(2) so that it refers to all of IEC 60092–352, not just to clause 8 of that standard, because proper installation requires use of the entire standard. We agree and have changed the text accordingly.

Two commenters asked us to revise § 111.60–5(c)(3) to permit the use of certain types of metal sheath as a grounding conductor. We have retained the NPRM language. The Coast Guard has a longstanding policy of not allowing any cable armor to be used as a grounding conductor. The requested change is a significant modification to our rules and is, therefore, beyond the scope of this rulemaking.

One commenter asked us to revise § 111.60–11(c), but without apparent change. We have retained the NPRM language.

Two commenters suggested deleting § 111.60–23 because its subject is addressed by IEEE 1580. Alternatively, they suggested revising the section ''to correct the construction and installation.'' We have retained the section as it appears in the NPRM. The requested change is beyond the scope of this rulemaking. Also, the restrictions of 46 CFR 111.60–23(c) cover a broader range of potential motions than those addressed in IEEE–1580, clauses 5.17.13 and 5.17.14. A detailed review of this issue is discussed in the **Federal Register** publications of June 4, 1996, page 28265, and May 1, 1997, page 23901. Prior to the publication of the existing rule, the Coast Guard conducted a complete review and revision of the regulations, bolstered by onsite observations, in order to determine the safe application of type MC cable aboard a vessel.

One commenter asked us to revise § 111.60–23(b) to require continuous corrugation, and to make other wording changes. We have retained the NPRM language. Continuous corrugation is already required by paragraph (a) of this section.

One commenter implied that we should omit §§ 111.105–3, 111.105–31(e), and 111.105–41 because their content is covered by section 33 of IEEE Std 45–2002. We are retaining these provisions. Adoption of the 2002 standard would, in these cases, constitute substantive changes beyond the scope of this rulemaking.

Three commenters asked us to revise § 111.105–17(a) to permit the use of Type MC–HL cable. This recommendation is outside the scope of this rulemaking.

Three commenters asked us to revise § 111.105–41 so that it specifically references clauses 22.7.2 and 33.7.3 of IEEE 45. We are retaining the current general reference to IEEE 45 because several of its clauses are applicable.

One commenter called our attention to an incorrect reference in § 111.107–1. We have corrected the section so that it refers to IEEE–1202.

Finally, one commenter suggested adding references, in § 113.30–25(j)(2), to IEC 60331–23 and IEC 60331–25. We are retaining the NPRM language for paragraph (j)(2). The recommendation is outside the scope of this rulemaking.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in 46 CFR 52.01–1, 53.01–1, 54.01–1, 56.01–2, 58.03–1, 59.01–2, 62.05–1, 63.05–1, 76.01–2, 92.01–2, 110.10–1, 162.017–1, 170.015, and 175.600 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

VI. 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.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Assessment is unnecessary.

We received 13 letters commenting on the NPRM. None of these letters suggested there would be additional costs to industry for compliance with these revised industry standards.

Operators, owners, and manufacturers of vessels affected by this rule currently practice and adhere to national and international standards developed by organizations composed of representatives from a cross-section of interest groups affected by these standards.

We estimate that this final rule will have no additional costs to industry. New vessels coming into service are equipped and built under the provisions and standards of this rule.

These provisions and standards are not retroactive for owners and operators of existing vessels. Additionally, these owners and operators are not required to upgrade to the new standards if their equipment breaks down. Owners and operators of existing vessels have the option of repairing existing equipment or possibly installing similar equipment. These owners and operators may incur expected repair and replacement costs related to their existing equipment, but they will not incur additional mandatory costs associated with the provisions and requirements of this rule. If any owner or operator of an existing vessel of the current fleet chooses to upgrade, it is a voluntary upgrade.

B. Benefits

This rule will eliminate confusion caused by outdated and conflicting rules on the safety of marine engineering for owners, operators, and manufacturers of vessels. These changes will update outdated rules to meet current national and international standards. In addition, this rule will give the maritime industry clear instructions and descriptions of how to comply with various rules.

C. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will 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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because it is not retroactive and because it imposes no mandatory costs on owners or operators of vessels.

D. 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).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. This rule will revise outdated standards on safety of marine equipment with international and national standards created and approved in part by State and local governments that participate in organizations that develop national standards for marine operation and safety.

F. 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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. 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.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. 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.

K. 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.

L. 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 be 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 uses voluntary consensus standards from the following organizations: American Bureau of Shipping (ABS) International, American National Standards Institute (ANSI), American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), American Gas Association, ASTM International, International Electrotechnical Commission (IEC), Institute of Electrical and Electronic Engineers (IEEE), International Maritime Organization (IMO), Instrument Society of America (ISA), International Organization for Standardization (ISO), Manufacturers Standardization Society of the Valve and Fitting Industry, Inc. (MSS), Naval Sea Systems Command (NAVSEA), National Electrical Manufacturers Association (NEMA), National Fire Protection Association (NFPA), Naval Publications and Forms Center (NPFC), Society of Automotive Engineers (SAE), and Underwriters' Laboratories, Inc. (UL). The sections that reference these consensus standards and the locations where these standards are available are listed in 46 CFR 52.01–1, 53.01–1, 54.01–1, 56.01–2, 58.03–1, 59.01–2, 62.05–1, 63.05–1, 76.01–2, 92.01–2, 110.10–1, 162.017–1, 170.015, and 175.600.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(d) of the Instruction, from further environmental documentation. This rule will replace outdated safety standards for marine equipment with current national and international standards, and therefore will not have any impact on the environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Parts 52, 53, 54, 56, 58, 59, 61, 62, 63, and 110

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 76

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 92

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Seamen.

46 CFR Parts 111, 112

Incorporation by reference, Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Incorporation by reference, Vessels.

46 CFR Part 162

Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Parts 175, 177, and 185

Marine safety, Incorporation by reference, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 176, 181

Fire prevention, Marine safety, Incorporation by reference, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 179, 182, 183

Incorporation by reference, Marine safety, Passenger vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 32, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 76, 92, 110, 111, 112, 113, 162, 170, 175, 176, 177, 179, 181, 182, 183, and 185 as follows:

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

■ 1. Revise the authority citation for part 32 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

■ 2. Add new § 32.53–30 to read as follows:

§ 32.53–30 Positive pressure—T/ALL.

Each inert gas system must be designed to enable the operator to maintain a gas pressure of 100 millimeters (4 inches) of water on filled cargo tanks and during loading and unloading of cargo tanks.

PART 50—GENERAL PROVISIONS

■ 3. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

§ 50.20–33 [Removed and Reserved]

■ 4. Remove and reserve § 50.20–33.

§ 50.25–1 [Amended]

■ 5. In § 50.25–1(e), remove the term ''G–MSE'' and add, in its place, the term ''CG–521''.

PART 52—POWER BOILERS

■ 6. The authority citation for part 52 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 7. Revise § 52.01–1 to read as follows:

§ 52.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Society of Mechanical Engineers (ASME) International,* Three Park Avenue, New York, NY 10016–5990:

(1) 2001 ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers (July 1, 2001) (''Section I of the ASME Boiler and Pressure Vessel Code''), 52.01–2; 52.01–5; 52.01–50; 52.01–90; 52.01–95; 52.01–100; 52.01–105; 52.01–110; 52.01–115; 52.01–120; 52.01–135; 52.01–140; 52.01–145; 52.05–1; 52.05–15; 52.05–20; 52.05–30; 52.05–45; 52.15–1; 52.15–5; 52.20–1; 52.20–25; 52.25–3; 52.25–5; 52.25–7; and 52.25–10.

(2) 1998 ASME Boiler and Pressure Vessel Code, Section II, Part A—Ferrous Material Specifications and Part B—Nonferrous Material Specifications (1998) (''Section II of the ASME Boiler and Pressure Vessel Code''), 52.01–90.

(3) [Reserved]

■ 8. Revise § 52.01–2(a) to read as follows:

§ 52.01–2 Adoption of section I of the ASME Boiler and Pressure Vessel Code.

(a) Main power boilers and auxiliary boilers shall be designed, constructed, inspected, tested, and stamped in accordance with section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1), as limited, modified, or replaced by specific requirements in this part. The provisions in the appendix to section I of the ASME Boiler and Pressure Vessel Code are adopted and shall be followed when the requirements in section I make them mandatory. For general information, Table 52.01–1(a) lists the various paragraphs in section I of the ASME Boiler and Pressure Vessel Code that are limited, modified, or replaced by regulations in this part.

* * * * *

■ 9. Revise § 52.01–5(a) to read as follows:

§ 52.01–5 Plans.

(a) Manufacturers intending to fabricate boilers to be installed on vessels shall submit detailed plans as required by subpart 50.20 of this subchapter. The plans, including design calculations, must be certified by a registered professional engineer as meeting the design requirements in this part and in section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1).

* * * * *

■ 10. Revise § 52.01–50(a) to read as follows:

§ 52.01–50 Fusible plugs (modifies A–19 through A–21).

(a) All boilers, except watertube boilers, with a maximum allowable working pressure in excess of 206 kPa gauge (30 psig), if fired with solid fuel not in suspension, or if not equipped for unattended waterbed operation, must be fitted with fusible plugs. Fusible plugs must comply with only the requirements of A19 and A20 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) and be stamped on the casing with the name of the manufacturer, and on the water end of the fusible metal ''ASME Std.'' Fusible plugs are not permitted where the maximum steam temperature to which they are exposed exceeds 218 °C (425 °F).

* * * * *

■ 11. Revise § 52.01–90 to read as follows:

§ 52.01–90 Materials (modifies PG–5 through PG–13).

(a) Material subject to stress due to pressure must conform to specifications as indicated in paragraphs PG–5 through PG–13 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) except as noted otherwise in this section.

(b) Material not fully identified with an ASME Boiler and Pressure Vessel Code-approved specification may be accepted as meeting Coast Guard requirements providing it satisfies the conditions indicated in paragraph PG–10 of section I of the ASME Boiler and Pressure Vessel Code.

(c) (*Modifies PG–5.*) When the maximum allowable working pressure (See PG–21) exceeds 15 pounds per square inch, cross pipes connecting the steam and water drums of water tube boilers, headers, cross boxes, and all pressure parts of the boiler proper, shall be made of a wrought or cast steel listed in Tables 1A and 1B of section II of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1).

(d) (*Modifies PG–8.2.*) The use of cast iron is prohibited for mountings, fittings, valves, or cocks attached directly to boilers operating at pressures exceeding 15 pounds per square inch.

■ 12. Revise § 52.01–95(a) and (f) to read as follows:

§ 52.01–95 Design (modifies PG–16 through PG–31 and PG–100).

(a) *Requirements.* Boilers required to be designed to this part shall meet the requirements of PG–16 through PG–31 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) except as noted otherwise in this section.

* * * * *

(f) *Cylindrical components under internal pressure.* (*Modifies PG–27.*) The minimum required thickness and maximum allowable working pressure of boiler piping, tubes, drums and headers shall be as required by the formula in PG–27 of section I of the ASME Boiler and Pressure Vessel Code except that threaded boiler tubes are not permitted.

■ 13. Revise § 52.01–100(a) and (b) to read as follows:

§ 52.01–100 Openings and compensation (modifies PG–32 through PG–39, PG–42 through PG–55).

(a) The rules for openings and compensation shall be as indicated in PG–32 through PG–55 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) except as noted otherwise in this section.

(b) (*Modifies PG–39.*) Pipe and nozzle necks shall be attached to vessel walls as indicated in PG–39 of section I of the ASME Boiler and Pressure Vessel Code except that threaded connections shall not be used under any of the following conditions:

(1) Pressures greater than 4,137 kPa (600 psig);

(2) Nominal diameters greater than 51 mm (2 in.); or

(3) Nominal diameters greater than 19 mm (0.75 in.) and pressures above 1,034 kPa (150 psig).

* * * * *

■ 14. Revise § 52.01–105(a) and (b) to read as follows:

§ 52.01–105 Piping, valves and fittings (modifies PG–58 and PG–59).

(a) Boiler external piping within the jurisdiction of the ASME Boiler and Pressure Vessel Code must be as indicated in PG–58 and PG–59 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) except as noted otherwise in this section. Piping outside the jurisdiction of the ASME Boiler and Pressure Vessel Code must meet the appropriate requirements of part 56 of this subchapter.

(b) In addition to the requirements in PG–58 and PG–59 of section I of the ASME Boiler and Pressure Vessel Code, boiler external piping must:

(1) Meet the design conditions and criteria in § 56.07–10 of this subchapter, except § 56.07–10(b);

(2) Be included in the pipe stress calculations required by § 56.35–1 of this subchapter;

(3) Meet the nondestructive examination requirements in § 56.95–10 of this subchapter;

(4) Have butt welding flanges and fittings when full radiography is required; and

(5) Meet the requirements for threaded joints in § 56.30–20 of this subchapter.

* * * * *

■ 15. Revise § 52.01–110(a) and (c) to read as follows:

§ 52.01–110 Water-level indicators, water columns, gauge-glass connections, gauge cocks, and pressure gauges (modifies PG–60).

(a) *Boiler water level devices.* Boiler water level devices shall be as indicated in PG–60 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) except as noted otherwise in this section.

* * * * *

(c) *Water columns.* (*Modifies PG–60.2.*) The use of water columns is generally limited to firetube boilers. Water column installations shall be close hauled to minimize the effect of ship motion on water level indication. When water columns are provided they shall be fitted directly to the heads or shells of boilers or drums by 1 inch minimum size pipes with shutoff valves attached directly to the boiler or drums, or if necessary, connected thereto by a distance piece both at the top and bottom of the water columns. Shutoff valves used in the pipe connections between the boiler and water column or between the boiler and the shutoff valves, required by PG–60.6 of section I of the ASME Boiler and Pressure Vessel Code for gauge glasses, shall be locked or sealed open. Water column piping shall not be fitted inside the uptake, the smoke box, or the casing. Water columns shall be fitted with suitable drains. Cast iron fittings are not permitted.

* * * * *

■ 16. Revise § 52.01–115 to read as follows:

§ 52.01–115 Feedwater supply (modifies PG–61).

Boiler feedwater supply must meet the requirements of PG–61 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) and § 56.50–30 of this subchapter.

§ 52.01–120 [Amended]

■ 17. In § 52.01–120—

■ a. In paragraph (a)(1), remove the words ''of the ASME Code'' and add, in

their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''; and

■ b. In paragraphs (a)(2)(i), (a)(4), (a)(6), (b)(1), (c)(1), (c)(3), (d)(1), and (d)(2), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code''.

§ 52.01–135 [Amended]

■ 18. In § 52.01–135—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''; and

■ b. In paragraphs (b) and (c), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code''.

§ 52.01–140 [Amended]

■ 19. In § 52.01–140—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)'';

■ b. In paragraph (b)(3), in the phrase ''section I of the ASME Code,'' add the words ''Boiler and Pressure Vessel'' between ''ASME'' and ''Code''; and

■ c. In paragraphs (c) and (d), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code''.

§ 52.01–145 [Amended]

■ 20. In § 52.01–145 text, remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.05–1 [Amended]

■ 21. In § 52.05–1(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.05–15 [Amended]

■ 22. In § 52.05–15(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

■ 23. Revise § 52.05–20 to read as follows:

§ 52.05–20 Radiographic and ultrasonic examination (modifies PW–11 and PW–41.1).

Radiographic and ultrasonic examination of welded joints must be as described in PW–11 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1), except that parts of boilers fabricated of pipe material such as drums, shells, downcomers, risers, cross pipes, headers, and tubes containing only circumferentially welded butt joints, must be nondestructively examined as required by § 56.95–10 of this subchapter even though they may be exempted by the limits on size specified in Table PW–11 and PW–41.1 of section I of the ASME Boiler and Pressure Vessel Code.

§ 52.05–30 [Amended]

■ 24. In § 52.05–30—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''; and

■ b. In paragraphs (b) and (c), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code''.

§ 52.05–45 [Amended]

■ 25. In § 52.05–45—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''; and

■ b. In paragraphs (b) and (c), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code''.

§ 52.15–1 [Amended]

■ 26. In § 52.15–1 text, remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.15–5 [Amended]

■ 27. In § 52.15–5—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''; and

■ b. In paragraph (b), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code''.

■ 28. Revise § 52.20–1 to read as follows:

§ 52.20–1 General (modifies PFT–1 through PFT–49).

Firetube boilers and parts thereof shall be as indicated in PFT–1 through PFT–49 of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1) except as noted otherwise in this subpart.

§ 52.20–25 [Amended]

■ 29. In § 52.20–25(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.25–3 [Amended]

■ 30. In § 52.25–3, remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.25–5 [Amended]

■ 31. In § 52.25–5, remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.25–7 [Amended]

■ 32. In § 52.25–7, remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

§ 52.25–10 [Amended]

■ 33. In § 52.25–10(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 52.01–1)''.

PART 53—HEATING BOILERS

■ 34. The authority citation for part 53 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 35. Revise § 53.01–1 to read as follows:

§ 53.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Society of Mechanical Engineers (ASME) International,* Three Park Avenue, New York, NY 10016–5990:

(1) 2001 ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers (July 1, 2001) (''Section I of the ASME Boiler and Pressure Vessel Code''), 53.01–10.

(2) 2004 ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers (July 1, 2004) (''Section IV of the ASME Boiler and Pressure Vessel Code''), 53.01–3; 53.01–5; 53.01–10; 53.05–1; 53.05–2; 53.05–3; 53.05–5; 53.10–1; 53.10–3; 53.10–10; 53.10–15; and 53.12–1.

(c) *Underwriters Laboratories Inc.,* 333 Pfingston Road, Northbrook, IL 60062–2096:

(1) UL 174, Standard for Household Electric Storage Tank Water Heaters, Tenth Edition, Feb. 28, 1996 (Revisions through and including Nov. 10, 1997) (''UL 174''), 53.01–10.

(2) UL 1453, Standard for Electric Booster and Commercial Storage Tank Water Heaters, Fourth Edition, Sep. 1, 1995 (''UL 1453''), 53.01–10.

■ 36. Revise § 53.01–3(a), (b), and paragraph (c) introductory text to read as follows:

§ 53.01–3 Adoption of section IV of the ASME Boiler and Pressure Vessel Code.

(a) Heating boilers shall be designed, constructed, inspected, tested, and stamped in accordance with section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1) as limited, modified, or replaced by specific requirements in this part. The provisions in the appendices to section IV of the ASME Boiler and Pressure Vessel Code are adopted and shall be followed when the requirements in section IV make them mandatory. For general information, Table 53.01–3(a) lists the various paragraphs in section IV of the ASME Boiler and Pressure Vessel Code that are limited, modified, or replaced by regulations in this part.

TABLE 53.01–3(a)—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF SECTION IV OF THE ASME BOILER AND PRESSURE VESSEL CODE

Paragraphs in Section IV of the ASME Boiler and Pressure Vessel Code [1] and disposition	Unit of this part
HG–100 modified by	53.01–5(b)
HG–101 replaced by	53.01–10
HG–400 modified by	53.05–1
HG–400.2 modified by	53.05–2
HG–401 modified by	53.05–1
HG–401.2 modified by	53.05–3
HG–500 through HG–540 modified by	53.10–3
HG–600 through HG–640 modified by	53.12–1

[1] The references to specific provisions in the ASME Boiler and Pressure Vessel Code are coded. The first letter, such as ''H,'' refers to section IV. The second letter, such as ''G,'' refers to a part or subpart in section IV. The number following the letters refers to the paragraph so numbered in the text of the part or subpart in section IV.

(b) References to the ASME Boiler and Pressure Vessel Code, such as paragraph HG–307, indicate:

H = Section IV of the ASME Boiler and Pressure Vessel Code.

G = Part containing general requirements.

3 = Article in part.

307 = Paragraph within Article 3.

(c) When a paragraph or a section of the regulations in this part relates to material in section IV of the ASME Boiler and Pressure Vessel Code, the relationship with the code will be shown immediately following the heading of the section or at the beginning of the paragraph, as follows:

* * * * *

■ 37. Revise § 53.01–5 to read as follows:

§ 53.01–5 Scope (modifies HG–100).

(a) The regulations in this part apply to steam heating boilers, hot water boilers (which include hot water heating boilers and hot water supply boilers), and to appurtenances thereto. The requirements in this part shall be used in conjunction with section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1). Table 54.01–5(a) of this subchapter gives a breakdown by parts in this subchapter of the regulations governing various types of pressure vessels and boilers.

(b) (*Modifies HG–100.*) The requirements of Part HG of section IV of the ASME Boiler and Pressure Vessel Code shall be used except as noted otherwise in this part.

■ 38. Amend § 53.01–10 by revising paragraphs (a), (c)(1), (e) introductory text, and (e)(1) to read as follows:

§ 53.01–10 Service restrictions and exceptions (replaces HG–101).

(a) *General.* The service restrictions and exceptions shall be as indicated in this section in lieu of the requirements in HG–101 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1).

* * * * *

(c) *Hot water supply boilers.* (1) Electrically fired hot water supply boilers that have a capacity not greater than 454 liters (120 gallons), a heat input not greater than 58.6 kilowatts (200,000 BTU per hour), and are listed as approved under Underwriters' Laboratories UL 174 or UL 1453 (both incorporated by reference; see 46 CFR 53.01–1) are exempted from the requirements of this part provided they are protected by a pressure relief device. This relief device need not comply with § 53.05–2.

* * * * *

(e) Heating boilers whose operating conditions are within the service restrictions of § 53.01–10(b)(1) may be constructed in accordance with section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1). In addition, these heating boilers must:

(1) Be stamped with the appropriate ASME Code symbol in accordance with PG–104 through PG–113 of section IV of the ASME Boiler and Pressure Vessel Code;

* * * * *

■ 39. Revise § 53.05–1(a) to read as follows:

§ 53.05–1 Safety valve requirements for steam boilers (modifies HG–400 and HG–401).

(a) The pressure relief valve requirements and the safety valve requirements for steam boilers must be as indicated in HG–400 and HG–401 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by

reference; see 46 CFR 53.01–1) except as noted otherwise in this section.

* * * * *

■ 40. Revise § 53.05–2(a) to read as follows:

§ 53.05–2 Relief valve requirements for hot water boilers (modifies HG–400.2).

(a) The relief valve requirements for hot water boilers must be as indicated in article 4 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1) except as noted otherwise in this section.

* * * * *

■ 41. Revise § 53.05–3 to read as follows:

§ 53.05–3 Materials (modifies HG–401.2).

Materials for valves must be in accordance with HG–401.2 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1) except that nonmetallic materials may be used only for gaskets and packing.

■ 42. Revise § 53.05–5 to read as follows:

§ 53.05–5 Discharge capacities and valve markings.

The discharge capacities and valve markings must be as indicated in HG–402 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1). The discharge capacities must be certified by the National Board of Boiler and Pressure Vessel Inspectors.

■ 43. Revise § 53.10–1 to read as follows:

§ 53.10–1 General.

The tests, inspection, stamping, and reporting of heating boilers shall be as indicated in Article 5, Part HG of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1) except as noted otherwise in this subpart.

■ 44. Revise § 53.10–3(a) to read as follows:

§ 53.10–3 Inspection and tests (modifies HG–500 through HG–540).

(a) The inspections required by HG–500 through HG–540 must be performed by the ''Authorized Inspector'' as defined in HG–515 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1). The Authorized Inspector shall hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. After installation, heating boilers must be inspected for compliance with this part by a marine inspector.

* * * * *

■ 45. Revise § 53.10–10 to read as follows:

§ 53.10–10 Certification by stamping.

Stamping of heating boilers shall be as indicated in HG–530 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1).

■ 46. Revise § 53.10–15 to read as follows:

§ 53.10–15 Manufacturers' data report forms.

The manufacturers' data report forms required by HG–520 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1) must be made available to the marine inspector for review. The Authorized Inspector's National Board commission number must be included on the manufacturers' data report forms.

■ 47. Amend subpart 53.12 by revising the subpart heading and § 53.12–1(a) to read as follows:

Subpart 53.12—Instruments, Fittings, and Controls (Article 6)

§ 53.12–1 General (modifies HG–600 through HG–640).

(a) The instruments, fittings and controls for heating boilers shall be as indicated in HG–600 through HG–640 of section IV of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 53.01–1) except as noted otherwise in this section.

* * * * *

PART 54—PRESSURE VESSELS

■ 48. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 49. Revise § 54.01–1 to read as follows:

§ 54.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Society of Mechanical Engineers (ASME) International,* Three Park Avenue, New York, NY 10016–5990:

(1) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, Rules for Construction of Pressure Vessels (1998 with 1999 and 2000 addenda) (''Section VIII of the ASME Boiler and Pressure Vessel Code''), 54.01–2; 54.01–5; 54.01–15; 54.01–18; 54.01–25; 54.01–30; 54.01–35; 54.03–1; 54.05–1; 54.10–1; 54.10–3; 54.10–5; 54.10–10; 54.10–15; 54.15–1; 54.15–5; 54.15–10; 54.15–13; 54.20–1; 54.20–3; 54.25–1; 54.25–3; 54.25–8; 54.25–10; 54.25–15; 54.25–20; 54.30–3; 54.30–5; 54.30–10; and

(2) [Reserved]

(c) *ASTM International (formerly American Society for Testing and Materials) (ASTM),* 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:

(1) ASTM A 20/A 20M–97a, Standard Specification for General Requirements for Steel Plates for Pressure Vessels (''ASTM A 20''), 54.05–10; 54.25–10;

(2) ASTM A 203/A 203M–97, Standard Specification for Pressure Vessel Plates, Alloy Steel, Nickel (''ASTM A 203''), 54.05–20;

(3) ASTM A 370–97a, Standard Test Methods and Definitions for Mechanical Testing of Steel Products (''ASTM A 370''), 54.25–20;

(4) ASTM E 23–96, Standard Test Methods for Notched Bar Impact Testing of Metallic Materials (''ASTM Specification E 23''), 54.05–5; and

(5) ASTM E 208–95a, Standard Test Method for Conducting Drop-Weight Test to Determine Nil-Ductility Transition Temperature of Ferritic Steels (''ASTM Specification E 208''), 54.05–5.

(d) *Compressed Gas Association (CGA),* 500 Fifth Avenue, New York, NY 10036:

(1) S–1.2, Pressure Relief Device Standards—Part 2—Cargo and Portable Tanks for Compressed Gases, 1979 (''CGA S–1.2''), 54.15–10; and

(2) [Reserved]

(e) *Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS),* 127 Park Street NE, Vienna, VA 22180:

(1) SP–25–1998 Standard Marking System for Valves, Fittings, Flanges and Unions (1998) (''MSS SP–25''), 54.01–25; and

(2) [Reserved]

■ 50. Amend § 54.01–2 by revising the section heading and paragraphs (a), (b), and (c) introductory text to read as follows:

§ 54.01–2 Adoption of division 1 of section VIII of the ASME Boiler and Pressure Vessel Code.

(a) Pressure vessels shall be designed, constructed, and inspected in accordance with section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see 46 CFR 54.01–1), as limited, modified, or replaced by specific requirements in this part. The provisions in the appendices to section VIII of the ASME Boiler and Pressure Vessel Code are adopted and shall be followed when the requirements in section VIII make them mandatory. For general information, Table 54.01–2(a) lists the various paragraphs in section VIII of the ASME Boiler and Pressure Vessel Code that are limited, modified, or replaced by regulations in this part.

TABLE 54.01–2(a)—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF SECTION VIII OF THE ASME BOILER AND PRESSURE VESSEL CODE

Paragraphs in section VIII of the ASME Boiler and Pressure Vessel Code[1] and disposition	Unit of this part
U–1 and U–2 modified by	54.01–5 through 54.01–15.
U–1(c) replaced by	54.01–5.
U–1(d) replaced by	54.01–5(a) and 54.01–15.
U–1(g) modified by	54.01–10.
U–1(c)(2) modified by	54.01–15.
UG–11 modified by	54.01–25.
UG–22 modified by	54.01–30.
UG–25 modified by	54.01–35.
UG–28 modified by	54.01–40.
UG–84 replaced by	54.05–1.
UG–90 and UG–91 replaced by	54.10–3.
UG–92 through UG–103 modified by	54.10–1 through 54.10–15.
UG–98 reproduced by	54.10–5.
UG–115 through UG–120 modified by	54.10–1.
UG–116, except (k), replaced by	54.10–20(a).
UG–116(k) replaced by	54.10–20(b).
UG–117 replaced by	54.10–20(c).
UG–118 replaced by	54.10–20(a).
UG–119 modified by	54.10–20(d).
UG–120 modified by	54.10–25.
UG–125 through UG–137 modified by	54.15–1 through 54.15–15.
UW–1 through UW–65 modified by	54.20–1.
UW–2(a) replaced by	54.01–5(b) and 54.20–2.
UW–2(b) replaced by	54.01–5(b) and 54.20–2.
UW–9, UW–11(a), UW–13, and UW–16 modified by	54.20–3.
UW–11(a) modified by	54.25–8.
UW–26, UW–27, UW–28, UW–29, UW–47, and UW–48 modified by	54.20–5.
UB–1 modified by	54.23–1
UB–2 modified by	52.01–95(d) and 56.30–30(b)(1).
UCS–6 modified by	54.25–3.
UCS–56 modified by	54.25–7.
UCS–57, UNF–57, UHA–33, and UHT–57 modified by	54.25–8.
UCS–65 through UCS–67 replaced by	54.25–10.
UHA–23(b) and UHA–51 modified by	54.25–15.
UHT–5(c), UHT–6, and UHT–23 modified by	54.25–20.
UHT–82 modified by	54.25–20 and 54.25–25.
Appendix 3 modified by	54.15–3.

[1] The references to specific provisions in section VIII of the ASME Boiler and Pressure Vessel Code are coded. The first letter, such as ''U,'' refers to division 1 of section VIII. The second letter, such as ''G,'' refers to a subsection within section VIII. The number refers to the paragraph within the subsection.

(b) References to the ASME Boiler and Pressure Vessel Code, such as paragraph UG–125, indicate:

U = Division 1 of section VIII of the ASME Boiler and Pressure Vessel Code.

G = Part containing general requirements.

125 = Paragraph within part.

(c) When a paragraph or a section of the regulations in this part relates to material in section VIII of the ASME Boiler and Pressure Vessel Code, the relationship with the code will be shown immediately following the heading of the section or at the beginning of the paragraph, as follows:

* * * * *

■ 51. In § 54.01–5—

■ a. In paragraph (c)(3), remove the words ''of the ASME Code'' and add, in their place, the words ''of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)'';

■ b. In paragraph (e), remove the words ''of the ASME Code'' and add, in their place, the words ''of the ASME Boiler and Pressure Vessel Code''; and

■ c. Revise Table 54.01–5(b) to read as set out below;

§ 54.01–5 Scope (modifies U–1 and U–2).

* * * * *

TABLE 54.01–5(b)—PRESSURE VESSEL CLASSIFICATION

[Note to Table 54.01–5(b): All classes of pressure vessels are subject to shop inspection and plan approval.[4]]

Class	Service contents	Class limits on pressure and temperature	Joint requirements [1,6,7]	Radiography requirements, section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see 46 CFR 54.01–1) [3,7]	Post-weld heat treatment requirements [5,7]
I	(a) Vapor or gas (b) Liquid (c) Hazardous Materials [2].	Vapor or gas: Over 600 p.s.i. or 700 °F. Liquid: Over 600 p.s.i. or 400 °F.	(1) For category A; (1) or (2) for category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of section VIII of the ASME Boiler and Pressure Vessel Code do not apply.	For carbon- or low-alloy steel, in accordance with Table UCS–56 of section VIII of the ASME Boiler and Pressure Vessel Code, regardless of thickness. For other materials, in accordance with section VIII.
I–L Low Temperature	(a) Vapor or gas, or liquid. (b) Hazardous Materials [2].	Over 250 p.s.i. and service temp. below 0 °F.	(1) For categories A and B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall. No backing rings or strips left in place.	Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of section VIII of the ASME Boiler and Pressure Vessel Code do not apply.	For carbon- or low-alloy steel, in accordance with Table UCS–56 of section VIII of the ASME Boiler and Pressure Vessel Code, regardless of thickness. For other materials, in accordance with section VIII.
II	(a) Vapor or gas (b) Liquid (c) Hazardous Materials [2,3,6].	Vapor or gas: 30 through 600 p.s.i. or 275 through 700 °F. Liquid: 200 through 600 p.s.i. or 250 through 400 °F.	(1) Or (2) for category A. (1), (2), or (3) for category B. Categories C and D in accordance with UW–16 of section VIII of the ASME Boiler and Pressure Vessel Code.	Spot, unless exempted by UW–11(c) of section VIII of the ASME Boiler and Pressure Vessel Code.	In accordance with section VIII of the ASME Boiler and Pressure Vessel Code.
II–L Low Temperature.	(a) Vapor or gas, or liquid. (b) Hazardous Materials [2].	0 through 250 p.s.i. and service temp. below 0 °F.	(1) For category A; (1) or (2) for category B. All categories C and D must have full-penetration welds extending through the entire thickness of the vessel wall or nozzle wall.	Spot. The exemption of UW–11(c) of section VIII of the ASME Boiler and Pressure Vessel Code does not apply.	Same as for I–L except that mechanical stress relief may be substituted if allowed under Subpart 54.30 of this chapter.
III	(a) Vapor or gas (b) Liquid (c) Hazardous Materials [2,3,6].	Vapor or gas: Under 30 p.s.i. and 0 through 275 °F. Liquid: Under 200 p.s.i. and 0 through 250 °F.	In accordance with Section VIII of the ASME Boiler and Pressure Vessel Code.	Spot, unless exempted by UW–11(c) of section VIII of the ASME Boiler and Pressure Vessel Code.	In accordance with section VIII of the ASME Boiler and Pressure Vessel Code.

[1] Welded joint categories are defined under UW–3 of section VIII of the ASME Boiler and Pressure Vessel Code. Joint types are described in Table UW–12 of section VIII of the ASME Boiler and Pressure Vessel Code, and numbered (1), (2), etc.
[2] See 46 CFR 54.20–2.
[3] See 46 CFR 54.25–8(c) and 54.25–10(d).
[4] See 46 CFR 54.01–15 and 54.10–3 for exemptions.
[5] Specific requirements modifying Table UCS–56 of section VIII of the ASME Boiler and Pressure Vessel Code appear in 46 CFR 54.25–7.
[6] See 46 CFR 54.20–3(c) and (f).
[7] Applies only to welded pressure vessels.

■ 52. In § 54.01–10, revise the section heading to read as follows:

§ 54.01–10 Steam-generating pressure vessels (modifies U–1(g)).

* * * * *

■ 53. Amend § 54.01–15 by revising the section heading and paragraphs (a)(1), (2)(i) through (iv), (3)(i), and (4) to read as follows:

§ 54.01–15 Exemptions from shop inspection and plan approval (modifies U–1(c)(2)).

(a) * * *

(1) Vessels containing water at a pressure not greater than 689 kPa (100 pounds per square inch gauge or

''psig''), and at a temperature not above 93 °C (200 °F) including those containing air, the compression of which serves only as a cushion. Air-charging lines may be permanently attached if the air pressure does not exceed 103 kPa (15 psig).

(2) * * *

(i) A heat input of 58 kW (200,000 B.t.u. per hour);

(ii) A water temperature of 93 °C (200 °F);

(iii) A nominal water-containing capacity of 454 liters (120 gallons); or

(iv) A pressure of 689 kPa (100 psig).

* * * * *

(3)(i) Vessels having an internal operating pressure not exceeding 103 kPa (15 psig) with no limitation on size. (See UG–28(f) of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1.)

* * * * *

(4) Condensers and heat exchangers, regardless of size, when the design is such that the liquid phase is not greater than 689 kPa (100 psig) and 200 °F (93 °C) and the vapor phase is not greater than 103 kPa (15 psig) provided that the OCMI is satisfied that system over-pressure conditions are addressed by the owner or operator.

* * * * *

§ 54.01–18 [Amended]

■ 54. In § 54.01–18(b)(5), remove the words, ''of section VIII of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.01–25 [Amended]

■ 55. In § 54.01–25—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''; and

■ b. In paragraph (b), remove the term ''MSS (Manufacturers' Standardization Society) Standard SP–25'' and, in its place, insert the words ''MSS SP–25 (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.01–30 [Amended]

■ 56. In § 54.01–30—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''; and

■ b. In paragraph (b) introductory text, remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.01–35 [Amended]

■ 57. In § 54.01–35—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)'';

■ b. In paragraph (b)(4), remove the words ''of the ASME Code'' and add, in their place, the words ''of the ASME Boiler and Pressure Vessel Code''; and

■ c. In the note following paragraph (d)(2), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.03–1 [Amended]

■ 58. In § 54.03–1, remove the paragraph designation; and in the text, remove the words ''of the ASME Code'' and add, in their place, the words ''of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.05–1 [Amended]

■ 59. In § 54.05–1, remove the paragraph designation; and in the text, remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.10–1 [Amended]

■ 60. In § 54.10–1, remove the paragraph designation; and in the text, remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.10–3 [Amended]

■ 61. In § 54.10–3(b), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

■ 62. Revise § 54.10–5 to read as follows:

§ 54.10–5 Maximum allowable working pressure (reproduces UG–98).

(a) The maximum allowable working pressure for a vessel is the maximum pressure permissible at the top of the vessel in its normal operating position at the designated coincident temperature specified for that pressure. It is the least of the values found for maximum allowable working pressure for any of the essential parts of the vessel by the principles given in paragraph (b) of this section and adjusted for any difference in static head that may exist between the part considered and the top of the vessel. (See Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1.)

(b) The maximum allowable working pressure for a vessel part is the maximum internal or external pressure, including the static head hereon, as determined by the rules and formulas in section VIII of the ASME Boiler and Pressure Vessel Code, together with the effect of any combination of loadings listed in UG–22 of section VIII of the ASME Boiler and Pressure Vessel Code (see 46 CFR 54.01–30) that are likely to occur, or the designated coincident operating temperature, excluding any metal thickness specified as corrosion allowance. (See UG–25 of section VIII of the ASME Boiler and Pressure Vessel Code.)

(c) Maximum allowable working pressure may be determined for more than one designated operating temperature, using for each temperature the applicable allowable stress value.

Note: Table 54.10–5 gives pictorially the interrelation among the various pressure levels pertinent to this part of the regulations. It includes reference to section VIII of the ASME Boiler and Pressure Vessel Code for definitions and explanations.

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Table 54.10-5--Pictorial Inter-Relation Among Various Pressure Levels with References to Specific Requirements[1]

Pressure differential[2]	Test pressures	Relief Device pressure settings	Pressures upon which flow capacity of relief devices is based
Increasing Pressure ↑	Burst-proof test (UG-101(m) of section VIII of the ASME Boiler and Pressure Vessel Code		
	Yield-proof test (UG-101(j) of section VIII of the ASME Boiler and Pressure Vessel Code)		
	Standard hydrostatic test (UG-99 of section VIII of the ASME Boiler and Pressure Vessel Code)		
			Fire exposure, 120% MAWP
	Pneumatic test (UG-100 of section VIII of the ASME Boiler and Pressure Vessel Code)		
		Rupture disk burst (§ 54.15-13)	
			Normal, 110% MAWP

	Maximum allowable working pressure (MAWP), UG-98 of section VIII of the ASME Boiler and Pressure Vessel Code	Maximum allowable working pressure (MAWP), UG-98 of section VIII of the ASME Boiler and Pressure Vessel Code	Maximum allowable working pressure (MAWP), UG-98 of section VIII of the ASME Boiler and Pressure Vessel Code
Increasing Pressure ↑	Design pressure, UG-21 and Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code	Design pressure, UG-21 and Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code	Design pressure, UG-21 and Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code
		Safety or relief valve setting (UG-133 of section VIII of the ASME Boiler and Pressure Vessel Code)	
	Operating Pressure (Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code)	Operating Pressure (Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code)	Operating Pressure (Appendix 3 of section VIII of the ASME Boiler and Pressure Vessel Code)

[1] For basic pressure definitions see 46 CFR 52.01-3(g) of this subchapter. Section VIII of the ASME Boiler and Pressure Vessel Code; see 46 CFR 54.01-1.

[2] For pressure differentials above 3,000 pounds per square inch (p.s.i.), special requirements may apply. Arrow of increasing pressure in left column signifies that, for example, the standard hydrostatic-test pressure is higher than the MAWP, which in turn is higher than the design pressure and the operating pressure, and so forth.

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■ 63. In § 54.10–10—
■ a. Amend paragraph (b) by revising the first and second sentences to read as set out below; and
■ b. In paragraph (e), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.10–10 Standard hydrostatic test (modifies UG–99).

* * * * *

(b) The hydrostatic-test pressure must be at least one and three-tenths (1.30) times the maximum allowable working pressure stamped on the pressure vessel, multiplied by the ratio of the stress value ''S'' at the test temperature to the stress value ''S'' at the design temperature for the materials of which the pressure vessel is constructed. The values for ''S'' shall be taken from Tables UCS 23, UNF 23, UHA 23, or UHT 23 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see 46 CFR 54.01–1). * * *

* * * * *

■ 64. Revise § 54.10–15(c) to read as follows:

§ 54.10–15 Pneumatic test (modifies UG–100).

* * * * *

(c) Except for enameled vessels, for which the pneumatic test pressure shall be at least equal to, but need not exceed, the maximum allowable working pressure to be marked on the vessel, the pneumatic test pressure shall be at least equal to one and one-tenth (1.10) times the maximum allowable working pressure to be stamped on the vessel multiplied by the lowest ratio (for the materials of which the vessel is constructed) of the stress value ''S'' for the test temperature of the vessel to the stress value ''S'' for the design temperature (see UG–21 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)). In no case shall the pneumatic test pressure exceed one and one-tenth (1.10) times the basis for calculated test pressure as defined in UA–60(e) of section VIII of the ASME Boiler and Pressure Vessel Code.

* * * * *

■ 65. Revise § 54.10–20(a)(6) to read as follows:

§ 54.10–20 Marking and stamping.

(a) * * *

(6) Minimum design metal temperature, if below −18 °C (0 °F).

* * * * *

■ 66. Revise § 54.15–1 section heading and paragraph (a) to read as follows:

§ 54.15–1 General (modifies UG–125 through UG–137).

(a) All pressure vessels built in accordance with applicable requirements in section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1) must be provided with protective devices as indicated in UG–125 through UG–137 of section VIII except as noted otherwise in this subpart.

* * * * *

■ 67. Revise § 54.15–3 section heading to read as follows:

§ 54.15–3 Definitions (modifies Appendix 3).

* * * * *

§ 54.15–5 [Amended]

■ 68. In § 54.15–5(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.15–10 [Amended]

■ 69. In § 54.15–10—
■ a. In paragraph (e), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)'';
■ b. In paragraph (h)(1), remove the term ''Compressed Gas Association Standard S–1.2.5.2'' and add, in its place, the words ''CGA S–1.2 (incorporated by reference; see 46 CFR 54.01–1)'';
■ c. In paragraph (h)(2), remove the words ''of the ASME Code'' and add, in their place, the words ''of Section VIII of the ASME Boiler and Pressure Vessel Code''; and
■ d. In paragraph (h)(3), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.15–13 [Amended]

■ 70. In § 54.15–13(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.20–1 [Amended]

■ 71. In § 54.20–1(a), remove the words ''of the ASME Code'' and add, in their place, the words ''of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.20–3 [Amended]

■ 72. In § 54.20–3—
■ a. In paragraph (b), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''; and
■ b. In paragraphs (c) and (d), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.25–1 [Amended]

■ 73. In § 54.25–1, remove the paragraph designation; and in the text, remove the words ''of the ASME Code'' and add, in their place, the words ''of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

■ 74. Revise § 54.25–3 to read as follows:

§ 54.25–3 Steel plates (modifies UCS–6).

The steels listed in UCS–6(b) of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1) will be allowed only in Class III pressure vessels (see Table 54.01–5(b)).

■ 75. Revise § 54.25–5 to read as follows:

§ 54.25–5 Corrosion allowance.

The corrosion allowance must be as required in 46 CFR 54.01–35.

§ 54.25–8 [Amended]

■ 76. In § 54.25–8(b), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''.

§ 54.25–10 [Amended]

■ 77. In 54.25–10—

■ a. In paragraph (b) introductory text, remove the words ''in the ASME Code'' and add, in their place, the words ''in section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)'';

■ b. In paragraph (c), remove the words ''Table UCS–23 of the ASME Code'' and add, in their place, the words ''Table UCS–23 of section VIII of the ASME Boiler and Pressure Vessel Code''; and remove the words ''Appendix P of section VIII of the ASME Code'' and add, in their place, the words ''Appendix P of Section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.25–15 [Amended]

■ 78. In § 54.25–15—

■ a. In paragraph (a), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''; and

■ b. In paragraphs (b) and (c), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code.''

■ 79. Amend § 54.25–20 by revising paragraphs (b) introductory text, (c), and (e) to read as follows:

§ 54.25–20 Low temperature operation—ferritic steels with properties enhanced by heat treatment (modifies UHT–5(c), UHT–6, UHT–23, and UHT–82).

* * * * *

(b) The materials permitted under paragraph (a) of this section shall be tested for toughness in accordance with the requirements of UHT–6 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1) except that tests shall be conducted at the temperature specified in § 54.05–6 in lieu of that in UHT–5(c) of section VIII of the ASME Boiler and Pressure Vessel Code.

* * * * *

(c) The qualification of welding procedures, welders and weld-production testing for the steels of Table 54.25–20(a) must conform to the requirements of part 57 of this subchapter and to those of subpart 54.05 of this part except that the acceptance criteria for Charpy V-notch testing must be in accordance with UHT–6(a)(4) of section VIII of the ASME Boiler and Pressure Vessel Code.

* * * * *

(e) Except as permitted by § 54.05–30, the allowable stress values may not exceed those given in Table UHT–23 of section VIII of the ASME Boiler Pressure and Vessel Code for temperatures of 150 °F and below.

■ 80. Revise § 54.25–25(a) to read as follows:

§ 54.25–25 Welding of quenched and tempered steels (modifies UHT–82).

(a) The qualification of welding procedures, welders, and weld-production testing must conform to the requirements of part 57 of this subchapter. The requirements of 46 CFR 57.03–1(d) apply to welded pressure vessels and non-pressure vessel type tanks of quenched and tempered steels other than 9-percent nickel.

* * * * *

■ 81. Revise § 54.30–3(c) to read as follows:

§ 54.30–3 Introduction.

* * * * *

(c) The weld joint efficiencies as listed in Table UW–12 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1) shall apply except that a minimum of spot radiography will be required. UW–12(c) of section VIII of the ASME Boiler and Pressure Vessel Code that permits omitting all radiography does not apply. Spot examination shall follow UW–52 of section VIII of the ASME Boiler and Pressure Vessel Code and, in addition, these vessels will be required to have radiographic examination of intersecting circumferential and longitudinal joints for a distance of at least 20 times the plate thickness from the junction. See 46 CFR 54.25–8 on spot radiography.

* * * * *

§ 54.30–5 [Amended]

■ 82. In § 54.30–5—

■ a. In paragraph (a)(1), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1)''; and

■ b. In paragraphs (a)(4) and (6), remove the words ''of the ASME Code'' wherever they appear and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code''.

§ 54.30–10 [Amended]

■ 83. In § 54.30–10(a)(1), remove the words ''of the ASME Code'' and add, in their place, the words ''of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 54.01–1).''

PART 56—PIPING SYSTEMS AND APPURTENANCES

■ 84. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Subpart 56.01—[Amended]

■ 85. Remove the note following the heading to subpart 56.01.

■ 86. Revise § 56.01–2 to read as follows:

§ 56.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American National Standards Institute (ANSI)*, 25 West 43rd Street, New York, NY 10036:

(1) ANSI/ASME B1.1–1982 Unified Inch Screw Threads (UN and UNR Thread Form) (1982) (''ANSI/ASME B1.1''), 56.25–20; 56.60–1;

(2) ANSI/ASME B1.20.1–1983 Pipe Threads, General Purpose (Inch) (1983) (''ANSI/ASME B1.20.1''), 56.60–1;

(3) ANSI/ASME B1.20.3–1976 (Reaffirmed 1982) Dryseal Pipe Threads (Inch) (''ANSI/ASME B1.20.3''), 56.60–1;

(4) ANSI/ASME B16.15–1985 [Reaffirmed 1994] Cast Bronze Threaded Fittings, Classes 125 and 250 (1985) (''ANSI/ASME B16.15''), 56.60–1;

(c) *American Petroleum Institute (API)*, 1220 L Street, NW., Washington, DC 20005–4070:

(1) API Standard 607, Fire Test for Soft-Seated Quarter-Turn Valves, Manufacturing, Distribution and Marketing Department, Fourth Edition (1993) (''API 607''), 56.20–15; and

(2) [Reserved]

(d) *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990:

(1) 2001 ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers (July 1, 2001) (''Section I of the ASME Boiler and Pressure Vessel Code''), 56.15–1; 56.15–5; 56.20–1; 56.60–1; 56.70–15; 56.95–10;

(2) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, Rules for Construction of Pressure Vessels (1998 with 1999 and 2000 addenda) (''Section VIII of the ASME Boiler and Pressure Vessel Code''), 56.15–1; 56.15–5; 56.20–

1; 56.25–5; 56.30–10; 56.30–30; 56.60–1; 56.60–2; 56.60–15; 56.95–10;

(3) 1998 ASME Boiler & Pressure Vessel Code, Section IX, Welding and Brazing Qualifications (1998) (''Section IX of the ASME Boiler and Pressure Vessel Code''), 56.70–5; 56.70–20; 56.75–20;

(4) ASME B16.1–1998 Cast Iron Pipe Flanges and Flanged Fittings, Classes 25, 125, 250 (1998) (''ASME B16.1''), 56.60–1; 56.60–10;

(5) ASME B16.3–1998 Malleable Iron Threaded Fittings, Classes 150 and 300 (1998) (''ASME B16.3''), 56.60–1;

(6) ASME B16.4–1998 Gray Iron Threaded Fittings, Classes 125 and 250 (1998) (''ASME B16.4''), 56.60–1;

(7) ASME B16.5–2003 Pipe Flanges and Flanged Fittings NPS ½ Through NPS 24 Metric/Inch Standard (2003) (''ASME B16.5''), 56.25–20; 56.30–10; 56.60–1;

(8) ASME B16.9–2003 Factory-Made Wrought Steel Buttwelding Fittings (2003) (''ASME B16.9''), 56.60–1;

(9) ASME B16.10–2000 Face-to-Face and End-to-End Dimensions of Valves (2000) (''ASME B16.10''), 56.60–1;

(10) ASME B16.11–2001 Forged Fittings, Socket-Welding and Threaded (2001) (''ASME B16.11''), 56.30–5; 56.60–1;

(11) ASME B16.14–1991 Ferrous Pipe Plugs, Bushings, and Locknuts with Pipe Threads (1991) (''ASME B16.14''), 56.60–1;

(12) ASME B16.18–2001 Cast Copper Alloy Solder Joint Pressure Fittings (2001) (''ASME B16.18''), 56.60–1;

(13) ASME B16.20–1998 (Revision of ASME B16.20 1993), Metallic Gaskets for Pipe Flanges: Ring-Joint, Spiral-Wound, and Jacketed (1998) (''ASME B16.20''), 56.60–1;

(14) ASME B16.21–2005 (Revision of ASME B16.21–1992) Nonmetallic Flat Gaskets for Pipe Flanges (May 31, 2005) (''ASME B16.21''): 56.60–1;

(15) ASME B16.22–2001 (Revision of ASME B16.22–1995) Wrought Copper and Copper Alloy Solder Joint Pressure Fittings (Aug. 9, 2002) (''ASME B16.22''): 56.60–1;

(16) ASME B16.23–2002 (Revision of ASME B16.23–1992) Cast Copper Alloy Solder Joint Drainage Fittings: DWV (Nov. 8, 2002) (''ASME B16.23''): 56.60–1;

(17) ASME B16.24–2001 Cast Copper Alloy Pipe Flanges and Flanged Fittings, Class 150, 300, 400, 600, 900, 1500, and 2500 (2001) (''ASME B16.24''), 56.60–1;

(18) ASME B16.25–2003 Buttwelding Ends (2003) (''ASME B16.25''), 56.30–5; 56.60–1; 56.70–10;

(19) ASME B16.28–1994 Wrought Steel Buttwelding Short Radius Elbows and Returns (1994) (''ASME B16.28''), 56.60–1;

(20) ASME B16.29–2007 (Revision of ASME B16.29–2001) Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings—DWV (Aug. 20, 2007) (''ASME B16.29''), 56.60–1;

(21) ASME B16.34–1996 Valves—Flanged, Threaded, and Welding End (1996) (''ASME B16.34''), 56.20–1; 56.60–1;

(22) ASME B16.42–1998 Ductile Iron Pipe Flanges and Flanged Fittings, Classes 150 and 300 (1998) (''ASME B16.42''), 56.60–1;

(23) ASME B18.2.1–1996 Square and Hex Bolts and Screws (Inch Series) (1996) (''ASME B18.2.1''), 56.25–20; 56.60–1;

(24) ASME/ANSI B18.2.2–1987 Square and Hex Nuts (Inch Series) (1987) (''ASME/ANSI B18.2.2''), 56.25–20; 56.60–1;

(25) ASME B31.1–2001 Power Piping ASME Code for Pressure Piping, B31 (2001) (''ASME B31.1''), 56.01–3; 56.01–5; 56.07–5; 56.07–10; 56.10–1; 56.10–5; 56.15–1; 56.15–5; 56.20–1; 56.25–7; 56.30–1; 56.30–5; 56.30–10; 56.30–20; 56.35–1; 56.50–1; 56.50–15; 56.50–40; 56.50–65; 56.50–70; 56.50–97; 56.60–1; 56.65–1; 56.70–10; 56.70–15; 56.80–5; 56.80–15; 56.95–1; 56.95–10; 56.97–1;

(26) ASME B36.10M–2004 Welded and Seamless Wrought Steel Pipe (2004) (''ASME B36.10M''), 56.07–5; 56.30–20; 56.60–1; and

(27) ASME B36.19M–2004 Stainless Steel Pipe (2004) (''ASME B36.19M''), 56.07–5; 56.60–1.

(28) ASME SA–675 (1998), Specification for Steel Bars, Carbon, Hot-Wrought, Special Quality, Mechanical Properties (''ASME SA–675''), 56.60–2.

(e) *ASTM International (formerly American Society for Testing and Materials) (ASTM)*, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:

(1) ASTM A 36/A 36M–97a, Standard Specification for Carbon Structural Steel (''ASTM A 36''), 56.30–10;

(2) ASTM A 47–90 (1995), Standard Specification for Ferritic Malleable Iron Castings (''ASTM A 47''), 56.60–1;

(3) ASTM A 53–98, Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless (''ASTM Specification A 53'' or ''ASTM A 53''), 56.10–5; 56.60–1;

(4) ASTM A 106–95, Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service (''ASTM A 106''), 56.60–1;

(5) ASTM A 126–95, Standard Specification for Gray Iron Castings for Valves, Flanges, and Pipe Fittings (''ASTM A 126''), 56.60–1;

(6) ASTM A 134–96, Standard Specification for Pipe, Steel, Electric-Fusion (Arc)-Welded (Sizes NPS 16 and Over) (''ASTM A 134''), 56.60–1;

(7) ASTM A 135–97c, Standard Specification for Electric-Resistance-Welded Steel Pipe (''ASTM A 135''), 56.60–1;

(8) ASTM A 139–96, Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and Over) (''ASTM A 139''), 56.60–1;

(8) ASTM A 178/A 178M–95, Standard Specification for Electric-Resistance-Welded Carbon Steel and Carbon-Manganese Steel Boiler and Superheater Tubes (''ASTM A 178''), 56.60–1;

(9) ASTM A 179/A 179M–90a (1996), Standard Specification for Seamless Cold-Drawn Low-Carbon Steel Heat-Exchanger and Condenser Tubes (''ASTM A 179''), 56.60–1;

(10) ASTM A 182/A 182M–97c, Standard Specification for Forged or Rolled Alloy-Steel Pipe Flanges, Forged Fittings, and Valves and Parts for High-Temperature Service (''ASTM A–182''), 56.50–105;

(11) ASTM A 192/A 192M–91 (1996), Standard Specification for Seamless Carbon Steel Boiler Tubes for High-Pressure Service (''ASTM A 192''), 56.60–1;

(12) ASTM A 194/A 194M–98b, Standard Specification for Carbon and Alloy Steel Nuts for Bolts for High Pressure or High Temperature Service, or Both (''ASTM A–194''), 56.50–105;

(13) ASTM A 197–87 (1992), Standard Specification for Cupola Malleable Iron (''ASTM A 197''), 56.60–1;

(14) ASTM A 210/A 210M–96, Standard Specification for Seamless Medium-Carbon Steel Boiler and Superheater Tubes (''ASTM A 210''), 56.60–1;

(15) ASTM A 213/A 213M–95a, Standard Specification for Seamless Ferritic and Austenitic Alloy-Steel Boiler, Superheater, and Heat-Exchanger Tubes (''ASTM A 213''), 56.60–1;

(16) ASTM A 214/A 214M–96, Standard Specification for Electric-Resistance-Welded Carbon Steel Heat-Exchanger and Condenser Tubes (''ASTM A 214''), 56.60–1;

(17) ASTM A 226/A 226M–95, Standard Specification for Electric-Resistance-Welded Carbon Steel Boiler and Superheater Tubes for High-Pressure Service (''ASTM A 226''), 56.60–1;

(18) ASTM A 234/A 234M–97, Standard Specification for Piping Fittings of Wrought Carbon Steel and Alloy Steel for Moderate and High Temperature Service (''ASTM A 234''), 56.60–1;

(19) ASTM A 249/A 249M–96a, Standard Specification for Welded

Austenitic Steel Boiler, Superheater, Heat-Exchanger, and Condenser Tubes (''ASTM A 249''), 56.60–1;

(20) ASTM A 268/A 268M–96, Standard Specification for Seamless and Welded Ferritic and Martensitic Stainless Steel Tubing for General Service (''ASTM A 268''), 56.60–1;

(21) ASTM A 276–98, Standard Specification for Stainless Steel Bars and Shapes (''ASTM A 276''), 56.60–2;

(22) ASTM A 307–97, Standard Specification for Carbon Steel Bolts and Studs, 60,000 PSI Tensile Strength (''ASTM A 307''), 56.25–20;

(23) ASTM A 312/A 312M–95a, Standard Specification for Seamless and Welded Austenitic Stainless Steel Pipes (''ASTM A–312'' or ''ASTM A 312''), 56.50–105; 56.60–1;

(24) ASTM A 320/A 320M–97, Standard Specification for Alloy/Steel Bolting Materials for Low-Temperature Service (''ASTM A–320''), 56.50–105;

(25) ASTM A 333/A 333M–94, Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service (''ASTM A–333'' or ''ASTM A 333''), 56.50–105; 56.60–1;

(26) ASTM A 334/A 334M–96, Standard Specification for Seamless and Welded Carbon and Alloy-Steel Tubes for Low-Temperature Service (''ASTM A–334'' or ''ASTM A 334''), 56.50–105; 56.60–1;

(27) ASTM A 335/A 335M–95a, Standard Specification for Seamless Ferritic Alloy-Steel Pipe for High-Temperature Service (''ASTM A 335''), 56.60–1;

(28) ASTM A 350/A 350M–97, Standard Specification for Carbon and Low-Alloy Steel Forgings, Requiring Notch; Toughness Testing for Piping Components (''ASTM A–350''), 56.50–105;

(29) ASTM A 351/A 351M–94a, Standard Specification for Castings, Austenitic, Austenitic-Ferritic (Duplex), for Pressure-Containing Parts (''ASTM A–351''), 56.50–105;

(30) ASTM A 352/A 352M–93 (1998), Standard Specification for Steel Castings, Ferritic and Martensitic, for Pressure-Containing Parts, Suitable for Low-Temperature Service (''ASTM A–352''), 56.50–105;

(31) ASTM A 358/A 358M–95a, Standard Specification for Electric-Fusion-Welded Austenitic Chromium-Nickel Alloy Steel Pipe for High-Temperature Service (''ASTM A 358''), 56.60–1;

(32) ASTM A 369/A 369M–92, Standard Specification for Carbon and Ferritic Alloy Steel Forged and Bored Pipe for High-Temperature Service (''ASTM A 369''), 56.60–1;

(33) ASTM A 376/A 376M–96, Standard Specification for Seamless Austenitic Steel Pipe for High-Temperature Central-Station Service (''ASTM A 376''), 56.60–1; 56.60–2;

(34) ASTM A 395/A 395M–98, Standard Specification for Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures (''ASTM A 395''), 56.50–60; 56.60–1; 56.60–15;

(35) ASTM A 403/A 403M–98, Standard Specification for Wrought Austenitic Stainless Steel Piping Fittings (''ASTM A 403''), 56.60–1;

(36) ASTM A 420/A 420M–96a, Standard Specification for Piping Fittings of Wrought Carbon Steel and Alloy Steel for Low-Temperature Service (''ASTM A–420'' or ''ASTM A 420''), 56.50–105; 56.60–1;

(37) ASTM A 520–97, Standard Specification for Supplementary Requirements for Seamless and Electric-Resistance-Welded Carbon Steel Tubular Products for High-Temperature Service Conforming to ISO Recommendations for Boiler Construction (''ASTM A 520''), 56.60–1;

(38) ASTM A 522/A 522M–95b, Standard Specification for Forged or Rolled 8 and 9% Nickel Alloy Steel Flanges, Fittings, Valves, and Parts for Low-Temperature Service (''ASTM A–522''), 56.50–105;

(39) ASTM A 536–84 (1993), Standard Specification for Ductile Iron Castings (''ASTM A 536''), 56.60–1;

(40) ASTM A 575–96, Standard Specification for Steel Bars, Carbon, Merchant Quality, M-Grades (''ASTM A 575''), 56.60–2;

(41) ASTM A 576–90b (1995), Standard Specification for Steel Bars, Carbon, Hot-Wrought, Special Quality (''ASTM A 576''), 56.60–2;

(42) ASTM B 16–92, Standard Specification for Free-Cutting Brass Rod, Bar, and Shapes for Use in Screw Machines (''ASTM B 16''), 56.60–2;

(43) ASTM B 21–96, Standard Specification for Naval Brass Rod, Bar, and Shapes (''ASTM B 21''), 56.60–2;

(44) ASTM B 26/B 26M–97, Standard Specification for Aluminum-Alloy Sand Castings (''ASTM B 26''), 56.60–2;

(45) ASTM B 42–96, Standard Specification for Seamless Copper Pipe, Standard Sizes (''ASTM B 42''), 56.60–1;

(46) ASTM B 43–96, Standard Specification for Seamless Red Brass Pipe, Standard Sizes (''ASTM B 43''), 56.60–1;

(47) ASTM B 68–95, Standard Specification for Seamless Copper Tube, Bright Annealed (''ASTM B 68''), 56.60–1;

(48) ASTM B 75–97, Standard Specification for Seamless Copper Tube (''ASTM B 75''), 56.60–1;

(49) ASTM B 85–96, Standard Specification for Aluminum-Alloy Die Castings (''ASTM B 85''), 56.60–2;

(50) ASTM B 88–96, Standard Specification for Seamless Copper Water Tube (''ASTM B 88''), 56.60–1;

(51) ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels (''ASTM B 96''), 56.60–2;

(52) ASTM B 111–95, Standard Specification for Copper and Copper-Alloy Seamless Condenser Tubes and Ferrule Stock (''ASTM B 111''), 56.60–1;

(53) ASTM B 124–96, Standard Specification for Copper and Copper Alloy Forging Rod, Bar, and Shapes (''ASTM B 124''), 56.60–2;

(54) ASTM B 134–96, Standard Specification for Pipe, Steel, Electric-Fusion (Arc)-Welded (Sizes NPS 16 and Over) (''ASTM B 134''), 56.60–1;

(55) ASTM B 161–93, Standard Specification for Nickel Seamless Pipe and Tube (''ASTM B 161''), 56.60–1;

(56) ASTM B 165–93, Standard Specification of Nickel-Copper Alloy (UNS NO4400) Seamless Pipe and Tube (''ASTM B 165''), 56.60–1;

(57) ASTM B 167–97a, Standard Specification for Nickel-Chromium-Iron Alloys (UNS NO6600, NO6601, NO6603, NO6690, NO6025, and NO6045) Seamless Pipe and Tube (''ASTM B 167''), 56.60–1;

(58) ASTM B 171–95, Standard Specification for Copper-Alloy Plate and Sheet for Pressure Vessels, Condensers, and Heat Exchangers (''ASTM B 171''), 56.60–2;

(59) ASTM B 210–95, Standard Specification for Aluminum and Aluminum-Alloy Drawn Seamless Tubes (''ASTM B 210''), 56.60–1;

(60) ASTM B 234–95, Standard Specification for Aluminum and Aluminum-Alloy Drawn Seamless Tubes for Condensers and Heat Exchangers (''ASTM B 234''), 56.60–1;

(61) ASTM B 241/B 241M–96, Standard Specification for Aluminum and Aluminum-Alloy Seamless Pipe and Seamless Extruded Tube (''ASTM B 241''), 56.60–1;

(62) ASTM B 280–97, Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service (''ASTM B 280''), 56.60–1;

(63) ASTM B 283–96, Standard Specification for Copper and Copper-Alloy Die Forgings (Hot-Pressed) (''ASTM B 283''), 56.60–2;

(64) ASTM B 315–93, Standard Specification for Seamless Copper Alloy

Pipe and Tube (''ASTM B 315''), 56.60–1;

(65) ASTM B 361–95, Standard Specification for Factory-Made Wrought Aluminum and Aluminum-Alloy Welding Fittings (''ASTM B 361''), 56.60–1;

(66) ASTM B 858M–95, Standard Test Method for Determination of Susceptibility to Stress Corrosion Cracking in Copper Alloys Using an Ammonia Vapor Test (''ASTM B 858M''), 56.60–2;

(67) ASTM E 23–96, Standard Test Methods for Notched Bar Impact Testing of Metallic Materials (''ASTM E 23''), 56.50–105;

(68) ASTM F 682–82a (1993), Standard Specification for Wrought Carbon Steel Sleeve-Type Pipe Couplings (''ASTM F 682''), 56.60–1;

(69) ASTM F 1006–86 (1992), Standard Specification for Entrainment Separators for Use in Marine Piping Applications (''ASTM F 1006''), 56.60–1;

(70) ASTM F 1007–86 (1996), Standard Specification for Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application (''ASTM F 1007''), 56.60–1;

(71) ASTM F 1020–86 (1996), Standard Specification for Line-Blind Valves for Marine Applications (''ASTM F 1020''), 56.60–1;

(72) ASTM F 1120–87 (1993), Standard Specification for Circular Metallic Bellows Type Expansion Joints for Piping Applications (''ASTM F 1120''), 56.60–1;

(73) ASTM F 1123–87 (1993), Standard Specification for Non-Metallic Expansion Joints (''ASTM F 1123''), 56.60–1;

(74) ASTM F 1139–88 (1993), Standard Specification for Steam Traps and Drains (''ASTM F 1139''), 56.60–1;

(75) ASTM F 1172–88 (1993), Standard Specification for Fuel Oil Meters of the Volumetric Positive Displacement Type (''ASTM F 1172''), 56.60–1;

(76) ASTM F 1173–95, Standard Specification for Thermosetting Resin Fiberglass Pipe and Fittings to be Used for Marine Applications (''ASTM F 1173''), 56.60–1;

(77) ASTM F 1199–88 (1993), Standard Specification for Cast (All Temperature and Pressures) and Welded Pipe Line Strainers (150 psig and 150 Degrees F Maximum) (''ASTM F 1199''), 56.60–1;

(78) ASTM F 1200–88 (1993), Standard Specification for Fabricated (Welded) Pipe Line Strainers (Above 150 psig and 150 Degrees F) (''ASTM F 1200''), 56.60–1;

(79) ASTM F 1201–88 (1993), Standard Specification for Fluid Conditioner Fittings in Piping Applications above 0 Degrees F (''ASTM F 1201''), 56.60–1;

(80) ASTM F 1387–93, Standard Specification for Performance of Mechanically Attached Fittings (''ASTM F 1387''), 56.30–25;

(81) ASTM F 1476–95a, Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications (''ASTM F 1476''), 56.30–35; and

(82) ASTM F 1548–94, Standard Specification for the Performance of Fittings for Use with Gasketed Mechanical Couplings, Used in Piping Applications (''ASTM F 1548''), 56.30–35.

(f) *Expansion Joint Manufacturers Association Inc. (EJMA)*, 25 North Broadway, Tarrytown, NY 10591:

(1) Standards of the Expansion Joint Manufacturers Association, 1980, 56.60–1; and

(2) [Reserved]

(g) *Fluid Controls Institute Inc. (FCI)*, 31 South Street, Suite 303, Morristown, NJ 07960:

(1) FCI 69–1 Pressure Rating Standard for Steam Traps (''FCI 69–1''), 56.60–1; and

(2) [Reserved]

(h) *International Maritime Organization (IMO)*, Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom:

(1) Resolution A.753(18) Guidelines for the Application of Plastic Pipes on Ships (''IMO Resolution A.753(18)''), 56.60–25; and

(2) [Reserved]

(i) *International Organization for Standardization (ISO)*, Case Postal 56, CH–1211 Geneva 20 Switzerland:

(1) ISO 15540 Ships and Marine Technology-Fire Resistance of Hose Assemblies-Test Methods, First Edition (Aug. 1, 1999) (''ISO 15540''), 56.60–25; and

(2) [Reserved]

(j) *Instrument Society of America (ISA)*, 67 Alexander Drive, Research Triangle Park, NC 27709:

(1) ISA–S75.02 (1996) (''ISA–S75.02''), 56.20–15; and

(2) [Reserved]

(k) *Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS)*, 127 Park Street NE, Vienna, VA 22180:

(1) SP–6–2001 Standard Finishes for Contact Faces of Pipe Flanges and Connecting-End Flanges of Valves and Fittings (2001) (''MSS SP–6''), 56.25–10; 56.60–1;

(2) SP–9–2001 Spot Facing for Bronze, Iron and Steel Flanges (2001) (''MSS SP–9''), 56.60–1;

(3) SP–25–1998 Standard Marking System for Valves, Fittings, Flanges and Unions (1998) (''MSS SP–25''), 56.15–1; 56.20–5; 56.60–1;

(4) SP–44–1996 Steel Pipe Line Flanges (Reaffirmed 2001) (''MSS SP–44''), 56.60–1;

(5) SP–45–2003 Bypass and Drain Connections (2003) (''MSS SP–45''), 56.20–20; 56.60–1;

(6) SP–51–2003 Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings (2003) (''MSS SP–51''), 56.60–1;

(7) SP–53–95 Quality Standard for Steel Castings and Forgings for Valves, Flanges and Fittings and Other Piping Components–Magnetic Particle Examination Method (1995) (''MSS SP–53''), 56.60–1;

(8) SP–55–2001 Quality Standard for Steel Castings for Valves, Flanges and Fittings and Other Piping Components–Visual Method (2001) (''MSS SP–55''), 56.60–1;

(9) SP–58 Pipe Hangers and Supports–Materials, Design and Manufacture (1993) (''MSS SP–58''), 56.60–1;

(10) SP–61–2003 Pressure Testing of Steel Valves (2003) (''MSS SP–61''), 56.60–1;

(11) SP–67 Butterfly Valves (1995) (''MSS SP–67''), 56.60–1;

(12) SP–69 Pipe Hangers and Supports–Selection and Application (1996) (''MSS SP–69''), 56.60–1;

(13) SP–72 Ball Valves with Flanged or Butt-Welding Ends for General Service (1987) (''MSS SP–72''), 56.60–1;

(14) SP–73 (R 96) Brazing Joints for Copper and Copper Pressure Fittings (1991) (''MSS SP–73''), 56.60–1; and

(15) SP–83 Class 3000 Steel Pipe Unions, Socket Welding and Threaded (1995) (''MSS SP–83''), 56.60–1;

(l) *Society of Automotive Engineers (SAE)*, 400 Commonwealth Drive, Warrendale, PA 15096:

(1) J1475 (1996) Surface Vehicle Hydraulic Hose Fittings for Marine Applications (June 1996) (''SAE J1475''), 56.60–25; and

(2) J1942 (1997) Standards Hose and Hose Assemblies for Marine Applications (May 1997) (''SAE J1942''), 56.60–25.

■ 87. Revise § 56.01–3 section heading and paragraph (b) to read as follows:

§ 56.01–3 Power boilers, external piping and appurtenances (Replaces 100.1.1, 100.1.2, 122.1, 132 and 133).

* * * * *

(b) Specific requirements for external piping and appurtenances of power boilers, as defined in §§ 100.1.1 and 100.1.2, appearing in the various paragraphs of ASME B31.1

(incorporated by reference; see 46 CFR 56.01–2), are not adopted unless specifically indicated elsewhere in this part.

■ 88. Revise § 56.01–5 to read as follows:

§ 56.01–5 Adoption of ASME B31.1 for power piping, and other standards.

(a) Piping systems for ships and barges must be designed, constructed, and inspected in accordance with ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2), as limited, modified, or replaced by specific requirements in this part. The provisions in the appendices to ASME B31.1 are adopted and must be followed when the requirements of ASME B31.1 or the rules in this part make them mandatory. For general information, Table 56.01–5(a) lists the various paragraphs and sections in ASME B31.1 that are limited, modified, replaced, or reproduced by rules in this part.

TABLE 56.01–5(a)—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF ASME B31.1 FOR PRESSURE AND POWER PIPING

Section or paragraph in ASME B31.1 and disposition	Unit in this part
100.1 replaced by	56.01–1.
100.2 modified by	56.07–5.
101 through 104.7 modified by.	56.07–10.
101.2 modified by	56.07–10(a), (b).
101.5 replaced by	56.07–10(c).
102.2 modified by	56.07–10(d).
102.3 and 104.1.2 modified by.	56.07–10(e).
104.3 modified by	56.07–10(f).
104.4 modified by	56.07–10(e).
104.5.1 modified by ...	56.30–10.
105 through 108 replaced by.	56.10–1 through 56.25–20.
110 through 118 replaced by.	56.30–1 through 56.30–35.
119.5.1 replaced by ...	56.35–10, 56.35–15.
119.7 replaced by	56.35–1.
122.1.4 replaced by ...	56.50–40.
122.3 modified by	56.50–97.
122.6 through 122.10 replaced by.	56.50–1 through 56.50–80.
123 replaced by	56.60–1.
Table 126.1 is replaced by.	56.30–5(c)(3), 56.60–1.
127 through 135 replaced by.	56.65–1, 56.70–10 through 56.90–10.
136 replaced by	56.95–1 through 56.95–10.
137 replaced by	56.97–1 through 56.97–40.

(viii) (b) When a section or paragraph of the regulations in this part relates to material in ASME B31.1, the relationship with ASME B31.1 will appear immediately after the heading of the section or at the beginning of the paragraph as follows:

(1) (Modifies ____.) This indicates that the material in ASME B31.1 so numbered for identification is generally applicable but is being altered, amplified, or augmented.

(2) (Replaces ____.) This indicates that the material in ASME B31.1 so numbered for identification does not apply.

(3) (Reproduces ____.) This indicates that the material in ASME B31.1 so numbered for identification is being identically reproduced for convenience, not for emphasis.

(c) As stated in § 56.01–2 of this chapter, the standards of the American National Standards Institute (ANSI) and ASME specifically referred to in this part must be the governing requirements for the matters covered unless specifically limited, modified, or replaced by other rules in this subchapter. See 46 CFR 56.60–1(b) for the other adopted commercial standards applicable to piping systems that also constitute this subchapter.

■ 89. Revise § 56.07–5(a) introductory text and paragraphs (c) and (f) to read as follows:

§ 56.07–5 Definitions (modifies 100.2).

(a) *Piping.* The definitions contained in 100.2 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2) apply, as well as the following: * * *

* * * * *

(c) *Schedule.* The word *Schedule* when used in this part refers to specific values as given in ASME B36.10M and B36.19M (both incorporated by reference; see 46 CFR 56.01–2).

* * * * *

(f) *Vital systems.* (1) Vital systems are those systems that are vital to a vessel's survivability and safety. For the purpose of this subchapter, the following are vital systems:

(i) Systems for fill, transfer, and service of fuel oil;

(ii) Fire-main systems;

(iii) Fixed gaseous fire-extinguishing systems;

(iv) Bilge systems;

(v) Ballast systems;

(vi) Steering systems and steering-control systems;

(vii) Propulsion systems and their necessary auxiliaries and control systems;

(viii) Ship's service and emergency electrical-generation systems and their auxiliaries vital to the vessel's survivability and safety;

(ix) Any other marine-engineering system identified by the cognizant OCMI as crucial to the survival of the vessel or to the protection of the personnel aboard.

(2) For the purpose of this subchapter, a system not identified by paragraph (1) of this definition is a non-vital system.

* * * * *

■ 90. In § 56.07–10, revise the heading in paragraph (a), paragraph (a)(1), the heading in paragraph (b), the heading and introductory text in paragraph (d), paragraph (d)(1), the heading in paragraph (e), paragraph (e)(1), and the heading and paragraph (f) introductory text to read as follows:

§ 56.07–10 Design conditions and criteria (modifies 101–104.7).

(a) *Maximum allowable working pressure.* (1) The maximum allowable working pressure of a piping system must not be greater than the internal design pressure defined in 104.1.2 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

(b) *Relief valves.* * * *

* * * * *

(d) *Ratings for pressure and temperature (modifies 102.2).* The material in 102.2 of ASME B31.1 applies, with the following exceptions:

(1) The details of components not having specific ratings as described in 102.2.2 of ASME B31.1 must be furnished to the Marine Safety Center for approval.

* * * * *

(e) *Pressure design (modifies 102.3, 104.1.2, and 104.4).* (1) Materials for use in piping must be selected as described in § 56.60–1(a) of this part. Tabulated values of allowable stress for these materials must be measured as indicated in 102.3.1 of ASME B31.1 and in tables 56.60–1 and 56.60–2(a) of this part.

* * * * *

(f) *Intersections (modifies 104.3).* The material in 104.3 of ASME B31.1 is applicable with the following additions:

* * * * *

■ 91. Revise § 56.10–1(b) to read as follows:

§ 56.10–1 Selection and limitations of piping components (replaces 105 through 108).

* * * * *

(b) The requirements in this subpart and in subparts 56.15 through 56.25 must be met instead of those in 105 through 108 in ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2); however, certain requirements are marked ''reproduced.''

■ 92. In § 56.10–5, redesignate paragraphs (c)(2–a), (c)(3), (c)(4), and (c)(5) as paragraphs (c)(3), (c)(4), (c)(5), and (c)(6), respectively, and revise

newly redesignated paragraphs (c)(3) and (c)(6) to read as follows:

§ 56.10–5 Pipe.

* * * * *

(c) * * *

(3) Copper-nickel alloys may be used for water and steam service within the design limits of stress and temperature indicated in ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

(6) Aluminum-alloy pipe or tube along with similar junction equipment may be used within the limitation stated in 124.7 of ASME B31.1 and paragraph (c)(5) of this section.

* * * * *

§ 56.15–1 [Amended]

■ 93. In § 56.15–1—

■ a. In paragraph (c)(2)(i), remove the term ''ANSI B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''; and remove the words ''ASME Code'' and add, in their place, the words ''ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)'';

■ c. In paragraph (c)(2)(ii), remove the words ''Section I of the ASME Code'' and add, in their place, the words ''Section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)'';

■ d. In paragraph (c)(4)(ii)(B), remove the words ''ASME Code'' and add, in their place, the words ''ASME Boiler and Pressure Vessel Code''; and

■ e. In paragraph (e), remove the words ''MSS Standard SP–25'' and add, in their place, the words ''MSS SP–25 (incorporated by reference; see 46 CFR 56.01–2)''.

§ 56.15–5 [Amended]

■ 94. In § 56.15–5—

■ a. In paragraph (c)(2)(ii)(A), remove the term ''ANSI B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''; and remove the term ''ASME Code'' and add, in its place, the words ''ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)''; and

■ b. In paragraph (c)(2)(ii)(B), remove the words ''Section I of the ASME Code'' and add, in their place, the words ''Section I of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see 46 CFR 56.01–2)''.

§ 56.20–1 [Amended]

■ 95. In § 56.20–1—

■ a. In paragraph (c)(2)(i), remove the term ''ANSI B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)'' and remove the words ''the ASME Code'' and add, in their place, the words ''the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)'';

■ b. In paragraph (c)(2)(ii), remove the words ''the ASME Code'' and add, in their place, the words ''the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)''; and

■ c. In paragraph (d), remove the term ''ANSI B16.34'' and add, in its place, the words ''ASME B16.34 (incorporated by reference; see 46 CFR 56.01–2)''.

■ 96. Revise § 56.20–5, including the section heading, to read as follows:

§ 56.20–5 Marking (modifies 107.2).

Each valve shall bear the manufacturer's name or trademark and reference symbol to indicate the service conditions for which the manufacturer guarantees the valve. The marking shall be in accordance with MSS SP–25 (incorporated by reference; see 46 CFR 56.01–2).

■ 97. Revise § 56.20–9(a) to read as follows:

§ 56.20–9 Valve construction.

(a) Each valve must close with a right-hand (clockwise) motion of the handwheel or operating lever as seen by one facing the end of the valve stem. Each gate, globe, and angle valve must generally be of the rising-stem type, preferably with the stem threads external to the valve body. Where operating conditions will not permit such installations, the use of a nonrising-stem valve will be acceptable. Each nonrising-stem valve, lever-operated valve, or other valve where, because of design, the position of the disc or closure mechanism is not obvious must be fitted with an indicator to show whether the valve is opened or closed, except as provided for in § 56.50–1(g)(2)(iii) of this part. No such indicator is required for any valve located in a tank or similar inaccessible space when indicators are available at accessible sites. The operating levers of each quarter-turn (rotary) valve must be parallel to the fluid flow when open and perpendicular to the fluid flow when closed.

* * * * *

■ 98. Revise § 56.20–15(c) to read as follows:

§ 56.20–15 Valves employing resilient material.

* * * * *

(c) If a valve designer elects to use either a calculation or actual fire testing instead of material removal and pressure testing, the calculation must employ ISA–S75.02 (incorporated by reference; see 46 CFR 56.01–2) to determine the flow coefficient (C_v), or the fire testing must be conducted in accordance with API 607 (incorporated by reference; see 46 CFR 56.01–2).

■ 99. Revise § 56.20–20(a) to read as follows:

§ 56.20–20 Valve bypasses.

(a) Sizes of bypasses shall be in accordance with MSS SP–45 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

■ 100. Amend § 56.25–5 by revising the first sentence to read as follows:

§ 56.25–5 Flanges.

Each flange must conform to the design requirements of either the applicable standards of Table 56.60–1(b) of this part, or of those of Appendix 2 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2). * * *

■ 101. Revise § 56.25–7 to read as follows:

§ 56.25–7 Blanks.

Each blank must conform to the design requirements of 104.5.3 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).

■ 102. Revise § 56.25–10(a) to read as follows:

§ 56.25–10 Flange facings.

(a) Flange facings shall be in accordance with the applicable standards listed in Table 56.60–1(b) and MSS SP–6 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

■ 103. Amend § 56.25–15 by revising the section heading, redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding new paragraph (b) to read as follows:

§ 56.25–15 Gaskets (modifies 108.4).

* * * * *

(b) Each gasket must conform to the design requirements of the applicable standards of Table 56.60–1(b) of this part.

* * * * *

■ 104. Revise § 56.25–20 paragraphs (a)(1), (b), (d), and (e) to read as follows:

§ 56.25–20 Bolting.

(a) *General.* (1) Bolts, studs, nuts, and washers must comply with applicable standards and specifications listed in 46 CFR 56.60–1. Unless otherwise specified, bolting must be in accordance

with ASME B16.5 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

(b) Carbon steel bolts or bolt studs may be used if expected normal operating pressure does not exceed 300 pounds per square inch gauge and the expected normal operating temperature does not exceed 400 °F. Carbon steel bolts must have heavy hexagon heads in accordance with ASME B18.2.1 (incorporated by reference, see 46 CFR 56.01–2) and must have heavy semifinished hexagonal nuts in accordance with ASME/ANSI B18.2.2 (incorporated by reference, see 46 CFR 56.01–2), unless the bolts are tightly fitted to the holes and flange stress calculations taking the bolt bending stresses into account are submitted. When class 250 cast iron flanges are used or when class 125 cast iron flanges are used with ring gaskets, the bolting material must be carbon steel conforming to ASTM A 307 (incorporated by reference, see 46 CFR 56.01–2), Grade B.

* * * * *

(d) All alloy bolts or studs and accompanying nuts are to be threaded in accordance with ANSI/ASME B1.1 (incorporated by reference; see 46 CFR 56.01–2), Class 2A external threads, and Class 2B internal threads (8-thread series 8UN for one inch and larger).

(e) (*Reproduces 108.5.1*) Washers, when used under nuts, shall be of forged or rolled material with steel washers being used under steel nuts and bronze washers under bronze nuts.

■ 105. Revise § 56.30–1 to read as follows:

§ 56.30–1 Scope (replaces 110 through 118).

The selection and limitation of piping joints must be as required by this subpart rather than as required by 110 through 118 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2); however, certain requirements are marked ''reproduced'' in this subpart.

■ 106. Revise § 56.30–5(b)(3), (c)(1), (c)(3) and (d) to read as follows:

§ 56.30–5 Welded joints.

* * * * *

(b) * * *

(3) Consumable insert rings must be used. Commonly used types of butt welding end preparations are shown in ASME B16.25 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

(c) * * *

(1) Each socket weld must conform to ASME B16.11 (incorporated by reference; see 46 CFR 56.01–2), to applicable standards listed in 46 CFR 56.60–1, Table 56.60–1(b), and to Figure 127.4.4C in ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2) as modified by § 56.30–10(b)(4) of this part. A gap of approximately one-sixteenth inch between the end of the pipe and the bottom of the socket must be provided before welding. This may best be provided by bottoming the pipe and backing off slightly before tacking.

* * * * *

(3) (*Reproduces 111.3.4.*) Drains and bypasses may be attached to a fitting or valve by socket welding provided the socket depth, bore diameter and shoulder thickness conform to ASME B16.11.

(d) *Fillet welds.* A fillet weld may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A of ASME B31.1. Fillet-weld details for socket-welding components must meet § 56.30–5(c). Fillet-weld details for flanges must meet § 56.30–10 of this part (see also § 56.70–15(d)(3) and (4) of this part for applications of fillet welds).

* * * * *

■ 107. Amend § 56.30–10 by revising paragraph (b) introductory text, (b)(1), and (b)(3) through (5), and remove the note that follows Figure 56.30–10(b) to read as follows:

§ 56.30–10 Flanged joints (modifies 104.5.1(a)).

* * * * *

(b) Flanges may be attached by any method shown in Figure 56.30–10(b) or by any additional means that may be approved by the Marine Safety Center. Pressure temperature ratings of the appropriate ANSI/ASME standard must not be exceeded.

* * * * *

(2) *Figure 56.30–10(b), Method 2.* ASME B16.5 (incorporated by reference; see 46 CFR 56.01–2) Class 150 and Class 300 low-hubbed flanges with screw threads, plus the addition of a strength fillet weld of the size as shown, may be used in Class I systems not exceeding 750 °F or 4 NPS, in Class II systems without diameter limitations, and in Class II–L systems not exceeding 1 NPS. If 100 percent radiography is required by § 56.95–10 of this part for the class, diameter, wall thickness, and material of pipe being joined, the use of the threaded flanges is not permitted and buttwelding flanges must be provided. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T.

(3) *Figure 56.30–10(b), Method 3.* Slip-on flanges meeting ASME B16.5 may be used in piping systems of Class I, Class II, or Class II–L not to exceed the service pressure-temperature ratings for flanges of class 300 and lower, within the temperature limitations of the material selected for use, and not to exceed 4-inch Nominal Pipe Size (NPS) in systems of Class I and Class II–L. If 100-percent radiography is required by 46 CFR 56.95–10 for the class, diameter, wall thickness, and material of the pipe being joined, then slip-on flanges are not permitted and buttwelding flanges are required. The configuration in Figure 127.4.4B(b) of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2), using a face and backweld, may be preferable where eliminating void spaces is desirable. For systems of Class II, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T, and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths of an inch. Restrictions on the use of slip-on flanges appear in § 56.50–105 of this part for low-temperature piping systems.

(4) *Figure 56.30–10(b), Method 4.* ASME B16.5 socket welding flanges may be used in Class I or II–L systems not exceeding 3 NPS for class 600 and lower class flanges and 2½ NPS for class 900 and class 1500 flanges within the service pressure-temperature ratings of the standard. * * *

(5) *Figure 56.30–10(b), Method 5.* Flanges fabricated from steel plate meeting the requirements of part 54 of this chapter may be used for Class II piping for pressures not exceeding 150 pounds per square inch and temperatures not exceeding 450 °F. Plate material listed in UCS–6(b) of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2) may not be used in this application, except that material meeting ASTM A 36 (incorporated by reference, see 46 CFR 56.01–2) may be used. The fabricated flanges must conform at least to the ASME B16.5 class 150 flange dimensions. The size of the strength fillet weld may be limited to a maximum of 0.525 inches instead of 1.4T and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths inch. In the following figure, T is nominal pipe wall thickness used. Refer to text in paragraph (b) of this section for modifications on Class II piping systems. Fillet weld leg size need not exceed the thickness of the applicable ASME hub.

* * * * *

■ 108. Revise § 56.30–20(b) and (d) to read as follows:

§ 56.30–20 Threaded joints.

* * * * *

(b) (*Reproduces 114.1.*) All threads on piping components must be taper pipe threads in accordance with the applicable standard listed in 46 CFR 56.60–1, Table 56.60–1(b). Threads other than taper pipe threads may be used for piping components where tightness of the joint depends on a seal weld or a seating surface other than the threads, and where experience or test has demonstrated that such threads are suitable.

* * * * *

(d) No pipe with a wall thickness less than that of standard weight of ASME B36.10M (incorporated by reference; see 46 CFR 56.01–2) steel pipe may be threaded regardless of service. For restrictions on the use of pipe in steam service more than 250 pounds per square inch or water service over 100 pounds per square inch and 200 °F (938C), see part 104.1.2(c)(1) of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2). Restrictions on the use of threaded joints apply for low-temperature piping and must be checked when designing for these systems.

§ 56.30–30 [Amended]

■ 109. In § 56.30–30(b)(1), remove the words ''ASME Code'' and, in their place, add the words ''ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)''.

■ 110. Revise § 56.35–1(b) to read as follows:

§ 56.35–1 Pipe-stress calculations (replaces 119.7).

* * * * *

(b) The Marine Safety Center (MSC) will give special consideration to the use of the full tabulated value of ''S'' in computing S_h and S_c where all material used in the system is subjected to further nondestructive testing specified by the MSC, and where the calculations prescribed in 119.6.4 and 102.3.2 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2) and 46 CFR 56.07–10 are performed. The procedures for nondestructive testing and the method of stress analysis must be approved by the MSC before the submission of computations and drawings for approval.

■ 111. Amend § 56.50–1 by revising the section heading and the introductory text to read as follows:

§ 56.50–1 General (replaces 122).

The requirements in this subpart for piping systems apply instead of those in section 122 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2). Installation requirements applicable to all systems:

* * * * *

■ 112. Revise § 56.50–10 section heading and paragraph (a) to read as follows:

§ 56.50–10 Special gauge requirements.

■ (a) Where pressure-reducing valves are employed, a pressure gauge must be provided on the low-pressure side of the reducing station.

* * * * *

■ 113. In § 56.50–15—

■ a. In paragraph (b), remove the term ''ANSI–B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)'' and remove the words ''Table 56.60–1(b)'' and add in their place the words ''46 CFR 56.60–1, Table 56.60–1(b)''; and

■ b. Revise paragraph (f) to read as follows:

§ 56.50–15 Steam and exhaust piping.

* * * * *

(f) The auxiliary steam piping of each vessel equipped with more than one boiler must be so arranged that steam for the whistle and other vital auxiliary systems, such as the electrical-generation plant, may be supplied from any power boiler.

* * * * *

■ 114. Revise § 56.50–30(b)(1) to read as follows:

§ 56.50–30 Boiler feed piping.

* * * * *

(b) * * *

(1) Stop and stop-check valves must be fitted in the main feed line and must be attached as closely as possible to drum inlets or to the economizer inlet on boilers fitted with integral economizers.

* * * * *

■ 115. Revise § 56.50–40 section heading and paragraph (a)(1) to read as follows:

§ 56.50–40 Blowoff piping (replaces 122.1.4).

(a)(1) The owner or operator of a vessel must follow the requirements for blowoff piping in this section instead of the requirements in 122.1.4 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

§ 56.50–60 [Amended]

■ 116. In § 56.50–60—

■ a. In paragraph (d)(1) introductory text, remove the term ''ASTM A395'' and add, in its place, the words ''ASTM A 395 (incorporated by reference; see 46 CFR 56.01–2)''; and

■ b. In paragraph (d)(2), remove the words ''(incorporated by reference; see § 56.01–2)''.

§ 56.50–65 [Amended]

■ 117. In § 56.50–65(a), remove the term ''ANSI–B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''.

■ 118. Revise § 56.50–70(a)(2) and (b)(2) to read as follows:

§ 56.50–70 Gasoline fuel systems.

(a) * * *

(2) Thicknesses of tubing walls must not be less than the larger of that shown in Table 56.50–70(a) of this section or that required by 46 CFR 56.07–10(e) and 104.1.2 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).

* * * * *

(b) * * *

(2) Either a short length of suitable metallic or nonmetallic flexible tubing or hose or a loop of annealed copper tubing must be installed in the fuel-supply line at or near the engine to prevent damage by vibration.

(i) If nonmetallic flexible hose is used, it must meet the requirements of 46 CFR 56.60–25(b) for fuel service.

(ii) Flexible hose connections should maintain metallic contact between the sections of the fuel-supply lines; however, if they do not, the fuel tank must be grounded.

* * * * *

■ 119. Revise § 56.50–97 section heading and paragraph (a) introductory text to read as follows:

§ 56.50–97 Piping for instruments, control, and sampling (modifies 122.3).

(a) Piping for instruments, control, and sampling must comply with paragraph 122.3 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2) except that:

* * * * *

■ 120. Amend § 56.50–105 by adding a note to Table 56.50–105, following the numbered footnotes, to read as follows:

§ 56.50–105 Low-temperature piping.

* * * * *

Table 56.50–105—Acceptable Materials and Toughness Test Criteria [2]

* * * * *

[2] Other material specifications for product forms acceptable under part 54 for use at low temperatures may also be used for piping

systems provided the applicable toughness requirements of this Table are also met.

* * * * *

Note: The ASTM standards listed in table 56.50–105 are incorporated by reference; see 46 CFR 56.01–2.

* * * * *

* * * * *

■ 121. Revise § 56.60–1 to read as follows:

§ 56.60–1 Acceptable materials and specifications (replaces 123 and Table 126.1 in ASME B31.1).

(a)(1) The material requirements in this subpart shall be followed in lieu of those in 123 in ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).

(2) Materials used in piping systems must be selected from the specifications that appear in Table 56.60–1(a) of this section or 46 CFR 56.60–2, Table 56.60–2(a), or they may be selected from the material specifications of sections I or VIII of the ASME Boiler and Pressure Vessel Code (both incorporated by reference; see 46 CFR 56.01–2) if not prohibited by a regulation of this subchapter dealing with the particular section of the ASME Boiler and Pressure Vessel Code. Table 56.60–1(a) of this section contains only pipe, tubing, and fitting specifications. Determination of acceptability of plate, forgings, bolting, nuts, and castings may be made by reference to the ASME Boiler and Pressure Vessel Code as previously described. Additionally, accepted materials for use as piping system components appear in 46 CFR 56.60–2, Table 56.60–2(a). Materials conforming to specifications not described in this subparagraph must receive the specific approval of the Marine Safety Center before being used. Materials listed in Table 126.1 of ASME B31.1 are not accepted unless specifically permitted by this paragraph.

(b) Components made in accordance with the commercial standards listed in Table 56.60–1(b) of this section and made of materials complying with paragraph (a) this section may be used in piping systems within the limitations of the standards and within any further limitations specified in this subchapter.

Note: Table 56.60–1(a) replaces Table 126.1 in ASME B31.1 and sets forth specifications of pipes, tubing, and fittings intended for use in piping-systems. The first column lists acceptable standards from ASTM (all incorporated by reference; see 46 CFR 56.01–2); the second lists those from ASME (all incorporated by reference; see 46 CFR 56.01–2). The Coast Guard will consider use of alternative pipes, tubing, and fittings when it receives certification of their mechanical properties. Without this certification it will restrict use of such alternatives to piping-systems inside heat exchangers that ensure containment of the material inside pressure shells.

TABLE 56.60–1(a)—ADOPTED SPECIFICATIONS AND STANDARDS

ASTM standards	ASME standards	Notes
Pipe, seamless:		
A 106 Carbon steel	ASME B31.1.	
A 335 Ferritic alloys	ASME B31.1.	
A 376 Austenitic alloys	ASME B31.1	(1).
Pipe, seamless and welded:		
A 53 Types S, F, and E steel pipe	ASME B31.1	(2,3,4).
A 312 Austenitic steel (welded with no filler metal)	ASME B31.1	(1,4).
A 333 Low temperature steel pipe	Sec. VIII of the ASME Boiler and Pressure Vessel Code	(5).
Pipe, welded:		
A 134 Fusion welded steel plate pipe	See footnote 7	(7).
A 135 ERW pipe	ASME B31.1	(3).
A 139 Grade B only, fusion welded steel pipe	ASME B31.1	(8).
A 358 Electric fusion welded pipe, high temperature, austenitic.	ASME B31.1	(1,4,9).
Pipe, forged and bored:		
A 369 Ferritic alloy	ASME B31.1.	
Pipe, centrifugally cast:	(None applicable)	(1,9)
Tube, seamless:		
A 179 Carbon steel heat exchanger and condenser tubes.	UCS23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	(11).
A 192 Carbon steel boiler tubes	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	(10).
A 210 Medium carbon boiler tubes	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	
A 213 Ferritic and austenitic boiler tubes	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	(1).
Tube, seamless and welded:		
A 268 Seamless and ERW ferritic stainless tubing	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	(4).
A 334 Seamless and welded (no added filler metal) carbon and low alloy tubing for low temperature.	UCS23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	(4,5).
Tube, welded:		
A 178 (Grades A and C only) ERW boiler tubes	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	(10 Grade A) (4).
A 214 ERW heat exchanger and condenser tubes	UCS27, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	
A 226 ERW boiler and superheater tubes	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	(4,10).
A 249 Welded austenitic boiler and heat exchanger tubes (no added filler metal).	PG23.1, Sec. I of the ASME Boiler and Pressure Vessel Code.	(1,4).
Wrought fittings (factory made):		
A 234 Carbon and ferritic alloys	Conforms to applicable American National Standards (ASME B16.9 and ASME B16.11).	(12).

TABLE 56.60–1(a)—ADOPTED SPECIFICATIONS AND STANDARDS—Continued

ASTM standards	ASME standards	Notes
A 403 Austenitic alloys	.....do	(12).
A 420 Low temperature carbon and steel alloy	.....do	(12).
Castings,[13] iron:		
A 47 Malleable iron	Conform to applicable American National Standards or refer to UCI–23 or UCD–23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	(14).
A 126 Gray iron	.....do	(14).
A 197 Malleable iron	.....do	(14).
A 395 Ductile iron	UCD–23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	(14).
A 536 Ductile iron	See footnote 20	(20).
Nonferrous Materials[15]		
Pipe, seamless:		
B 42 Copper	UNF23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	(16).
B 43 Red brass	.....do.	
B 241 Aluminum alloy	.....do.	
Pipe and tube, seamless:		
B 161 Nickel	.....do.	
B 165 Nickel-copper	.....do.	
B 167 Ni-Cr-Fe	.....do.	
B 315 Copper-silicon	.....do.	
Tube, seamless:		
B 68 Copper	See footnote 17	(16,17,18).
B 75 Copper	UNF23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	(16).
B 88 Copper	See footnote 17	(16,17).
B 111 Copper and copper alloy	UNF23, Sec. VIII of the ASME Boiler and Pressure Vessel Code.	
B 210 Aluminum alloy, drawn	.....do.	
B 234 Aluminum alloy, drawn	.....do.	
B 280 Copper tube for refrigeration service	See footnote 17	(16,17).
Welding fittings:		
B 361 Wrought aluminum welding fittings	Shall meet ASME Standards.	

ASTM specification	Minimum tensile	Longitudinal joint efficiency	P No.	Allowable stresses (p.s.i.)
A 134:				
Grade 285A	45,000	0.80	1	11,250 × 0,8 = 9,000.
Grade 285B	50,000	0.80	1	12,500 × 0,8 = 10,000.
Grade 285C	55,000	0.80	1	13,750 × 0,8 = 11,000.

Note: When using 104.1.2 in ASME B31.1 to compute wall thickness, the stress shown here shall be applied as though taken from the stress tables. An additional factor of 0.8 may be required by § 56.07–10(c) and (e).

[1] For austenitic materials where two sets of stresses appear, use the lower values.

[2] Type F (Furnace welded, using open hearth, basic oxygen, or electric furnace only) limited to Class II applications with a maximum service temperature of 450 °F. Type E (ERW grade) limited to maximum service temperature of 650 °F, or less.

[3] Electric resistance welded pipe or tubing of this specification may be used to a maximum design pressure of 350 pounds per square inch gage.

[4] Refer to limitations on use of welded grades given in § 56.60–2(b).

[5] Use generally considered for Classes I–L and II–L applications. For Class I–L service only, the seamless grade is permitted. For other service refer to footnote 4 and to § 56.50–105.

[6] Furnace lap or furnace butt grades only. Limited to Class II applications only where the maximum service temperature is 450 °F, or less.

[7] Limited to Grades 285A, 285B, and 285C only (straight and spiral seam). Limited to Class II applications only where maximum service temperature is 300 °F or less for straight seam, and 200 °F or less for spiral seam.

[8] Limited to Class II applications where the maximum service temperature is 300 °F or less for straight seam and 200 °F or less for spiral seam.

[9] For Class I applications only the Class I Grade of the specification may be used.

[10] When used in piping systems, a certificate shall be furnished by the manufacturer certifying that the mechanical properties at room temperature specified in ASTM A 520 (incorporated by reference; see 46 CFR 56.01–2) have been met. Without this certification, use is limited to applications within heat exchangers.

[11] When used in piping systems, a certificate shall be furnished by the manufacturer certifying that the mechanical properties for A192 in ASTM A 520 have been met. Without this certification, use is limited to applications within heat exchangers.

[12] Hydrostatic testing of these fittings is not required but all fittings shall be capable of withstanding without failure, leakage, or impairment of serviceability, a hydrostatic test of 1½ times the designated rating pressure.

[13] Other acceptable iron castings are in UCI–23 and UCD–23 of section VIII of the ASME Boiler and Pressure Vessel Code. (See also §§ 56.60–10 and 56.60–15.) Acceptable castings of materials other than cast iron may be found in sections I or VIII of the ASME Boiler and Pressure Vessel Code.

[14] Acceptable when complying with American National Standards Institute standards. Ductile iron is acceptable for temperatures not exceeding 650 °F. For pressure temperature limitations refer to UCD–3 of section VIII of the ASME Boiler and Pressure Vessel Code. Other grades of cast iron are acceptable for temperatures not exceeding 450 °F. For pressure temperature limitations refer to UCI–3 of section VIII of the ASME Boiler and Pressure Vessel Code.

[15] For limitations in use refer to §§ 56.10–5(c) and 56.60–20.

[16] Copper pipe must not be used for hot oil systems except for short flexible connections at burners. Copper pipe must be annealed before installation in Class I piping systems. See also §§ 56.10–5(c) and 56.60–20.
[17] The stress values shall be taken from UNF23 of section VIII of the ASME Boiler and Pressure Vessel Code for B75 annealed and light drawn temper as appropriate.
[18] B68 shall be acceptable if provided with a mill hydrostatic or eddy current test.
[19] Centrifugally cast pipe must be specifically approved by the Marine Safety Center.
[20] Limited to pipe fittings and valves. See 46 CFR 56.60–15(d) for additional information.

TABLE 56.60–1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)

American National Standards Institute (all incorporated by reference; see 46 CFR 56.01–2)	
ANSI/ASME B1.1	1982 Unified Inch Screw Threads (UN and UNR Thread Form).
ANSI/ASME B1.20.1	1983 Pipe Threads, General Purpose (Inch).
ANSI/ASME B1.20.3	1976 (Reaffirmed 1982) Dryseal Pipe Threads (Inch).
ANSI/ASME B16.15	1985 [Reaffirmed 1994] Cast Bronze Threaded Fittings, Classes 125 and 250.
American Society of Mechanical Engineers (ASME) International (all incorporated by reference; see 46 CFR 56.01–2)	
ASME B16.1	1998 Cast Iron Pipe Flanges and Flanged Fittings, Classes 25, 125, 250.
ASME B16.3	1998 Malleable Iron Threaded Fittings, Classes 150 and 300.
ASME B16.4	1998 Gray Iron Threaded Fittings, Classes 125 and 250.
ASME B16.5	2003 Pipe Flanges and Flanged Fittings NPS ½ Through NPS 24 Metric/Inch Standard.[3]
ASME B16.9	2003 Factory-Made Wrought Steel Buttwelding Fittings.
ASME B16.10	2000 Face-to-Face and End-to-End Dimensions of Valves.
ASME B16.11	2001 Forged Fittings, Socket-Welding and Threaded.
ASME B16.14	1991 Ferrous Pipe Plugs, Bushings, and Locknuts with Pipe Threads.
ASME B16.18	2001 Cast Copper Alloy Solder Joint Pressure Fittings.[4]
ASME B16.20	1998 (Revision of ASME B16.20 1993) Metallic Gaskets for Pipe Flanges: Ring-Joint, Spiral-Wound, and Jacketed.
ASME B16.21	2005 Nonmetallic Flat Gaskets for Pipe Flanges.
ASME B16.22	2001 Wrought Copper and Copper Alloy Solder Joint Pressure Fittings.[4]
ASME B16.23	2002 Cast Copper Alloy Solder Joint Drainage Fittings: DWV.[4]
ASME B16.24	2001 Cast Copper Alloy Pipe Flanges and Flanged Fittings: Class 150, 300, 400, 600, 900, 1500, and 2500.[3]
ASME B16.25	2003 Buttwelding Ends.
ASME B16.28	1994 Wrought Steel Buttwelding Short Radius Elbows and Returns.[4]
ASME B16.29	2007 Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings-DWV.[4]
ASME B16.34	1996 Valves—Flanged, Threaded, and Welding End.[3]
ASME B16.42	1998 Ductile Iron Pipe Flanges and Flanged Fittings, Classes 150 and 300.
ASME B18.2.1	1996 Square and Hex Bolts and Screws (Inch Series).
ASME/ANSI B18.2.2	1987 Square and Hex Nuts (Inch Series).
ASME B31.1	2001 Power Piping ASME Code for Pressure Piping, B31.
ASME B36.10M	2004 Welded and Seamless Wrought Steel Pipe.
ASME B36.19M	2004 Stainless Steel Pipe.
American Society for Testing and Materials (ASTM) (all incorporated by reference; see 46 CFR 56.01–2)	
ASTM F 682	Standard Specification for Wrought Carbon Steel Sleeve-Type Pipe Couplings.
ASTM F 1006	Standard Specification for Entrainment Separators for Use in Marine Piping Applications.[4]
ASTM F 1007	Standard Specification for Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application.
ASTM F 1020	Standard Specification for Line-Blind Valves for Marine Applications.
ASTM F 1120	Standard Specification for Circular Metallic Bellows Type Expansion Joints for Piping Applications.[4]
ASTM F 1123	Standard Specification for Non-Metallic Expansion Joints.
ASTM F 1139	Standard Specification for Steam Traps and Drains.
ASTM F 1172	Standard Specification for Fuel Oil Meters of the Volumetric Positive Displacement Type.
ASTM F 1173	Standard Specification for Thermosetting Resin Fiberglass Pipe and Fittings to be Used for Marine Applications.
ASTM F 1199	Standard Specification for Cast (All Temperature and Pressures) and Welded Pipe Line Strainers (150 psig and 150 Degrees F Maximum).
ASTM F 1200	Standard Specification for Fabricated (Welded) Pipe Line Strainers (Above 150 psig and 150 Degrees F.)
ASTM F 1201	Standard Specification for Fluid Conditioner Fittings in Piping Applications above 0 Degrees F.
Expansion Joint Manufacturers Association Inc. (incorporated by reference; see 46 CFR 56.01–2)	
Standards of the Expansion Joint Manufacturers Association, 1980	
Fluid Controls Institute Inc. (incorporated by reference; see 46 CFR 56.01–2)	
FCI 69–1	Pressure Rating Standard for Steam Traps.

TABLE 56.60–1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)—Continued

Manufacturers' Standardization Society of the Valve and Fittings Industry, Inc. (all incorporated by reference; see 46 CFR 56.01–2) [4]	
SP–6	Standard Finishes for Contact Faces of Pipe Flanges and Connecting-End Flanges of Valves and Fittings.
SP–9	Spot Facing for Bronze, Iron and Steel Flanges.
SP–25	Standard Marking System for Valves, Fittings, Flanges and Unions.
SP–44	Steel Pipe Line Flanges.[4]
SP–45	Bypass and Drain Connection Standard.
SP–51	Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings.[4]
SP–53	Quality Standard for Steel Castings and Forgings for Valves, Flanges and Fittings and Other Piping Components—Magnetic Particle Examination Method.
SP–55	Quality Standard for Steel Castings for Valves, Flanges and Fittings and Other Piping Components—Visual Method.
SP–58	Pipe Hangers and Supports—Materials, Design and Manufacture.
SP–61	Pressure Testing of Steel Valves.
SP–67	Butterfly Valves.[2,4]
SP–69	Pipe Hangers and Supports—Selection and Application.
SP–72	Ball Valves with Flanged or Butt-Welding Ends for General Service.[4]
SP–73	Brazing Joints for Copper and Copper Pressure Fittings.
SP–83	Class 3000 Steel Pipe Unions, Socket-Welding and Threaded.

[1] [Reserved]
[2] In addition, for bronze valves, adequacy of body shell thickness shall be satisfactory to the Marine Safety Center. Refer to § 56.60–10 of this part for cast-iron valves.
[3] Mill or manufacturer's certification is not required, except where a needed portion of the required marking is deleted because of size or is absent because of age of existing stocks.
[4] Because this standard offers the option of several materials, some of which are not generally acceptable to the Coast Guard, compliance with the standard does not necessarily indicate compliance with these rules. The marking on the component or the manufacturer or mill certificate must indicate the specification or grade of the materials as necessary to fully identify the materials. The materials must comply with the requirements in this subchapter governing the particular application.

■ 122. Revise § 56.60–2(c)(1)(ii) and table 56.60–2(a) to read as follows:

§ 56.60–2 Limitations on materials.

* * * * *

(c) * * *

(1) * * *

(ii) Ultrasonic examination as required by item S–6 in ASTM A 376 (incorporated by reference; see 46 CFR 56.01–2) shall be certified as having been met in all applications except where 100 percent radiography is a requirement of the particular material specification.

* * * * *

TABLE 56.60–2(a)—ADOPTED SPECIFICATIONS NOT LISTED IN THE ASME BOILER AND PRESSURE VESSEL CODE *

ASTM specifications	Source of allowable stress	Notes
Ferrous Materials [1]		
Bar stock:		
A 276 (Grades 304–A, 304L–A, 310–A, 316–A, 316L–A, 321–A, 347–A, and 348–A).	See footnote 4	(4).
A 575 and A 576. (Grades 1010–1030)	See footnote 2	(2,3).
Nonferrous Materials		
Bar stock:		
B 16 (soft and half hard tempers)	See footnote 5	(5,7).
B 21 (alloys A, B, and C)	See footnote 8	(8).
B 124:		
Alloy 377	See footnotes 5 and 9	(5,9).
Alloy 464	See footnote 8	(8,10).
Alloy 655	See footnote 11	(11).
Alloy 642	See footnote 12	(7,12).
Alloy 630	See footnote 13	(7,13).
Alloy 485	See footnote 8	(8,10).
Forgings:		
B 283 (forging brass)	See footnotes 5 and 9	(5,9).
Castings:		
B 26	See footnotes 5, 14, and 15	(5,14,15).
B 85	See footnotes 5, 14, and 15	(5,14,15).

* **Note:** Table 56.60–2(a) is a listing of adopted bar stock and nonferrous forging and casting specifications not listed in the ASME Boiler and Pressure Vessel Code. Particular attention should be given to the supplementary testing requirements and service limitations contained in the footnotes. All ASTM standards referred to in Table 56.60–2(a) and its footnotes are incorporated by reference (see 46 CFR 56.01–2).
[1] For limitations in use refer to 46 CFR 56.60–5.
[2] Allowable stresses shall be the same as those listed in UCS23 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2) for SA–675 material of equivalent tensile strength.

[3] Physical testing shall be performed as for material manufactured to ASME SA–675 (incorporated by reference, see 46 CFR 56.01–2), except that the bend test shall not be required.
[4] Allowable stresses shall be the same as those listed in UCS23 of section VIII of the ASME Boiler and Pressure Vessel Code for the corresponding SA–182 material.
[5] Limited to air and hydraulic service with a maximum design temperature of 150 °F. The material must not be used for salt water service or other fluids that may cause dezincification or stress corrosion cracking.
[6] [Reserved]
[7] An ammonia vapor test, in accordance with ASTM B 858M–95 shall be performed on a representative model of each finished product design.
[8] Allowable stresses shall be the same as those listed in UNF23 of section VIII of the ASME Boiler and Pressure Vessel Code for SB–171, naval brass.
[9] An ammonia vapor test, in accordance with ASTM B 858M, shall be performed on a representative model for each finished product design. Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in Table 3 of ASTM B 283.
[10] Physical testing, including mercurous nitrate test, shall be performed as for material manufactured to ASTM B 21.
[11] Physical testing shall be performed as for material manufactured to ASTM B 96. Allowable stresses shall be the same as those listed in UNF23 of section VIII of the ASME Boiler and Pressure Vessel Code for SB–96 and shall be limited to a maximum allowable temperature of 212 °F.
[12] Physical testing shall be performed as for material manufactured to ASTM B 171, alloy D. Allowable stresses shall be the same as those listed in UNF23 of section VIII of the ASME Boiler and Pressure Vessel Code for SB–171, aluminum bronze D.
[13] Physical testing shall be performed as for material manufactured to ASTM B 171, alloy E. Allowable stresses shall be the same as those listed in UNF23 of section VIII of the ASME Boiler and Pressure Vessel Code for SB–171, aluminum bronze, alloy E.
[14] Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table X–2 of ASTM B 85.
[15] Those alloys with a maximum copper content of 0.6 percent or less shall be acceptable under this specification. Cast aluminum shall not be welded or brazed.

■ 123. Revise § 56.60–3(b) to read as follows:

§ 56.60–3 Ferrous materials.

* * * * *

(b) (Reproduces 124.2.C) Carbon or alloy steel having carbon content of more than 0.35 percent shall not be used in welded construction, nor be shaped by oxygen-cutting process or other thermal-cutting process.

■ 124. Revise § 56.60–5(a) and (b) to read as follows:

§ 56.60–5 Steel (High-temperature applications).

(a) (Reproduces 124.2.A.) Upon prolonged exposure to temperatures above 775 °F (412 °C), the carbide phase of plain carbon steel, plain nickel-alloy steel, carbon-manganese-alloy steel, manganese-vanadium-alloy steel, and carbon-silicon steel may convert to graphite.

(b) (Reproduces 124.2.B.) Upon prolonged exposure to temperatures above 875 °F (468 °C), the carbide phase of alloy steels, such as carbon-molybdenum, manganese-molybdenum-vanadium, manganese-chromium-vanadium, and chromium-vanadium, may convert to graphite.

* * * * *

■ 125. Revise § 56.60–10(a) to read as follows:

§ 56.60–10 Cast iron and malleable iron.

(a) The low ductility of cast iron and malleable iron should be recognized and the use of these metals where shock loading may occur should be avoided. Cast iron and malleable iron components shall not be used at temperatures above 450 °F. Cast iron and malleable iron fittings conforming to the specifications of 46 CFR 56.60–1, Table 56.60–1(a) may be used at pressures not exceeding the limits of the applicable standards shown in that table at temperatures not exceeding 450 °F. Valves of either of these materials may be used if they conform to the standards for class 125 and class 250 flanges and flanged fittings in ASME B16.1 (incorporated by reference; see 46 CFR 56.01–2) and if their service does not exceed the rating as marked on the valve.

* * * * *

■ 126. Revise § 56.60–15(a) and (b)(2) to read as follows:

§ 56.60–15 Ductile iron.

(a) Ductile cast iron components made of material conforming to ASTM A 395 (incorporated by reference, see 46 CFR 56.01–2) may be used within the service restrictions and pressure-temperature limitations of UCD–3 of section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2).

(b) * * *

(2) Large castings for components, such as hydraulic cylinders, are examined as specified for a casting quality factor of 90 percent in accordance with UG–24 of section VIII of the ASME Boiler and Pressure Vessel Code; and

* * * * *

■ 127. Amend § 56.60–25 by revising paragraph (a) introductory text, paragraphs (b)(1), (b)(2), (b)(3), and (b)(5), and by adding paragraph (b)(6) to read as follows:

§ 56.60–25 Nonmetallic materials.

(a) Plastic pipe installations shall be in accordance with IMO Resolution A.753(18) (incorporated by reference; see 46 CFR 56.01–2) and the following supplemental requirements:

* * * * *

(b) *Nonmetallic flexible hose.* (1) Nonmetallic flexible hose must be in accordance with SAE J1942 (incorporated by reference; see 46 CFR 56.01–2) and may be installed only in vital and nonvital fresh and salt water systems, nonvital pneumatic systems, lube oil and fuel systems, and fluid power systems.

(2) Nonmetallic flexible hose may be used in vital fresh and salt water systems at a maximum service pressure of 1,034 kPa (150 psi). Nonmetallic flexible hose may be used in lengths not exceeding 76 cm (30 inches) where flexibility is required, subject to the limits in paragraphs (a)(1) through (4) of this section. Nonmetallic flexible hose may be used for plastic pipe in duplicate installations in accordance with this paragraph (b).

(3) Nonmetallic flexible hose may be used for plastic pipe in non-vital fresh and salt water systems and non-vital pneumatic systems, subject to the limits of paragraphs (a)(1) through (4) of this section. Unreinforced hoses are limited to a maximum service pressure of 345 kPa (50 psi); reinforced hoses are limited to a maximum service pressure of 1,034 kPa (150 psi).

* * * * *

(5) Nonmetallic flexible hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose end fittings must comply with SAE J1475 (incorporated by reference; see 46 CFR 56.01–2). Field attachable fittings must be installed following the manufacturer's recommended practice. If special

equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5 of this part.

(6) The fire-test procedures of ISO 15540 (incorporated by reference; see 46 CFR 56.01–2) are an acceptable alternative to those procedures of SAE J1942. All other tests of SAE J1942 are still required.

* * * * *

■ 128. Revise § 56.65–1 to read as follows:

§ 56.65–1 General (replaces 127 through 135).

The requirements for fabrication, assembly and erection in subparts 56.70 through 56.90 shall apply in lieu of 127 through 135.4 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2). Those paragraphs reproduced are so noted.

■ 129. Revise § 56.70–5(a) to read as follows:

§ 56.70–5 Material.

(a) *Filler metal.* All filler metal, including consumable insert material, must comply with the requirements of section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2) and 46 CFR 57.02–5.

* * * * *

■ 130. In § 56.70–10—

■ a. Revise the heading of paragraph (a), and paragraphs (a)(1)(ii) and (b) to read as set out below; and

■ b. In paragraph (a)(3), remove the words ''(see Fig. 127.3.1)'' and add, in their place, the words ''(see Fig. 127.3)'':

§ 56.70–10 Preparation (modifies 127.3).

(a) *Butt welds (reproduces 127.3).* (1)

* * *

(ii) Butt-welding end preparation dimensions contained in ASME B16.25 (incorporated by reference; see 46 CFR 56.01–2) or any other end preparation that meets the procedure qualification requirements are acceptable.

* * * * *

(b) *Fillet welds (modifies 127.4.4).* In making fillet welds, the weld metal must be deposited in such a way as to obtain adequate penetration into the base metal at the root of the weld. Piping components that are to be joined utilizing fillet welds must be prepared in accordance with applicable provisions and requirements of this section. For typical details, see Figures 127.4.4A and 127.4.4C of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2) and 46 CFR 56.30–10(b). See 46 CFR 56.30–5(d) for additional requirements.

■ 131. In § 56.70–15—

■ a. Revise paragraphs (b)(1), (b)(5), and (b)(6) introductory text, the paragraph headings in paragraphs (f) introductory text and (g) introductory text, and paragraph (g)(4) to read as set out below;

■ b. In paragraph (b)(8)(ii), remove the words ''ASME Code'' and, in their place, add the words ''ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)'';

■ c. In paragraph (c), remove the term ''ANSI–B31.1'' and add, in its place, the term ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''; and

■ d. In paragraphs (d)(1) and (g)(1) through (7), remove the terms ''ANSI–B31.1'' and ''ANSI B31.1'' wherever they appear and add, in their place, the term ''ASME B31.1''.

§ 56.70–15 Procedure.

* * * * *

(b) * * *

(1) Girth butt welds must be complete penetration welds and may be made with a single vee, double vee, or other suitable type of groove, with or without backing rings or consumable inserts.

* * * * *

(5) When components of different outside diameters are welded together, the weld joint must be filled to the outside surface of the component having the larger diameter. There must be a gradual transition, not exceeding a slope of 1:3, in the weld between the two surfaces. To avoid unnecessary weld deposit, the outside surface of the component having the larger diameter must be tapered at an angle not to exceed 30 degrees with the axis of the pipe. (See Fig. 127.4.2 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2).)

(6) As-welded surfaces are permitted; however, the surface of the welds must be sufficiently free from coarse ripple, grooves, overlaps, abrupt ridges and valleys to meet the following:

* * * * *

(f) *Weld defect repairs.* * * *

* * * * *

(g) *Welded branch connections.* * * *

(4) Branch connections (including specially made, integrally reinforced branch connection fittings) that abut the outside surface of the run wall, or that are inserted through an opening cut in the run wall, shall have opening and branch contour to provide a good fit and shall be attached by means of full penetration groove welds except as otherwise permitted in paragraph (g)(7) of this section. The full penetration groove welds shall be finished with cover fillet welds having a minimum throat dimension not less than $2t_c$. The limitation as to imperfection of these groove welds shall be as set forth in 127.4.2(C) of ASME B31.1 for girth welds.

* * * * *

■ 132. Revise § 56.70–20(a) to read as follows:

§ 56.70–20 Qualification, general.

(a) Qualification of the welding procedures to be used, and of the performance of welders and welding operators, is required, and shall comply with the requirements of section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2) except as modified by part 57 of this subchapter.

* * * * *

■ 133. Revise § 56.75–5(c) to read as follows:

§ 56.75–5 Filler metal.

* * * * *

(c) Fluxes that are fluid and chemically active at the brazing temperature must be used when necessary to prevent oxidation of the filler metal and of the surfaces to be joined and to promote free flowing of the filler metal.

■ 134. Revise § 56.75–10 section heading to read as follows:

§ 56.75–10 Joint clearance.

* * * * *

■ 135. Revise § 56.75–15 section heading to read as follows:

§ 56.75–15 Heating.

* * * * *

■ 136. Revise § 56.75–20(a) to read as follows:

§ 56.75–20 Brazing qualification.

(a) The qualification of the performance of brazers and brazing operators shall be in accordance with the requirements of part C, Section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2) and part 57 of this subchapter.

* * * * *

■ 137. Revise § 56.75–25(b) to read as follows:

§ 56.75–25 Detail requirements.

* * * * *

(b) The surfaces to be brazed must be clean and free from grease, oxides, paint, scale, and dirt of any kind. Any suitable chemical or mechanical cleaning method may be used to provide a clean, wettable surface for brazing.

* * * * *

§ 56.80–5 [Amended]

■ 138. In § 56.80–5, remove the term ''ANSI–B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''.

■ 139. Revise § 56.80–15(a), (c), (d), (e), and (g) to read as follows:

§ 56.80–15 Heat treatment of bends and formed components.

(a) Carbon-steel piping that has been heated to at least 1,650 °F (898 °C) for bending or other forming requires no subsequent heat treatment.

* * * * *

(c) Cold bending and forming of carbon steel having a wall thickness of three-fourths of an inch and heavier, and all ferritic-alloy pipe in nominal pipe sizes of 4 inches and larger, or one-half-inch wall thickness or heavier, will require a stress-relieving treatment.

(d) Cold bending of carbon-steel and ferritic-alloy steel pipe in sizes and wall thicknesses less than specified in 129.3.3 of ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2) may be used without a postheat treatment.

(e) For other materials the heat treatment of bends and formed components must be such as to ensure pipe properties that are consistent with the original pipe specification.

* * * * *

(g) Austenitic stainless-steel pipe that has been heated for bending or other forming may be used in the ''as-bent'' condition unless the design specification requires post-bending heat treatment.

■ 140. Revise § 56.85–5 to read as follows:

§ 56.85–5 Heating and cooling method.

Heat treatment may be accomplished by a suitable heating method that will provide the desired heating and cooling rates, the required metal temperature, metal temperature uniformity, and temperature control.

■ 141. Revise § 56.85–10(b) and (c) to read as follows:

§ 56.85–10 Preheating.

* * * * *

(b) During the welding of dissimilar materials, the minimum preheat temperature may not be lower than either the highest temperature listed in Table 56.85–10 for any of the materials to be welded or the temperature established in the qualified welding procedure.

(c) The preheat temperature shall be checked by use of temperature-indicating crayons, thermocouples, pyrometers, or other suitable methods to ensure that the required preheat temperature is obtained before, and uniformly maintained during the welding.

* * * * *

■ 142. Revise § 56.85–15(d), (e), and (i) to read as follows:

§ 56.85–15 Postheat treatment.

* * * * *

(d) The postheating treatment selected for parts of an assembly must not adversely affect other components. Heating a fabricated assembly as a complete unit is usually desirable; however, the size or shape of the unit or the adverse effect of a desired treatment on one or more components where dissimilar materials are involved may dictate alternative procedures. For example, it may be heated as a section of the assembly before the attachment of others or local circumferential-band heating of welded joints in accordance with 46 CFR 56.85–10, Table 56.85–10 Note (12) and 46 CFR 56.85–15(j)(3).

(e) Postheating treatment of welded joints between dissimilar metals having different postheating requirements must be established in the qualified welding procedure.

* * * * *

(i) For those materials listed under P–1, when the wall thickness of the thicker of the two abutting ends, after their preparation, is less than three-fourths inch, the weld needs no postheating treatment. In all cases, where the nominal wall thickness is three-fourths inch or less, postheating treatment is not required.

* * * * *

■ 143. Revise § 56.90–5(b) and (d) to read as follows:

§ 56.90–5 Bolting procedure.

* * * * *

(b) When bolting gasketed flanged joints, the gasket must be properly compressed in accordance with the design principles applicable to the type of gasket used.

* * * * *

(d) All bolts must be engaged so that there is visible evidence of complete threading through the nut or threaded attachment.

■ 144. Revise § 56.90–10 section heading to read as follows:

§ 56.90–10 Threaded piping (modifies 135.5).

* * * * *

§ 56.95–1 [Amended]

■ 145. In § 56.95–1—

■ a. In paragraph (a), remove the term ''ANSI-B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''; and

■ b. In paragraph (b) remove the term ''ANSI–B31.1'' and add, in its place, the term ''ASME B31.1''.

§ 56.95–10 [Amended]

■ 146. In § 56.95–10—

■ a. In paragraph (a) introductory text, remove the term ''ANSI–B31.1'' and add, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)'';

■ b. In paragraph (c)(1)(i), remove the words ''ASME Code'' and, in their place, add the words ''ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)'';

■ c. In paragraph (c)(1)(ii), remove the words ''ASME Code'' and, in their place, add the words ''ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 56.01–2)'';

■ d. In paragraph (c)(4) introductory text, remove the words, ''ASME Code'' and, in their place, add the words ''ASME Boiler and Pressure Vessel Code''; and

■ e. In paragraph (c)(5) remove the words ''ASME Code'' and, in their place, add the words ''ASME Boiler and Pressure Vessel Code''.

§ 56.97–1 [Amended]

■ 147. Amend § 56.97–1(a) by removing the term ''ANSI-B31.1'' and adding, in its place, the words ''ASME B31.1 (incorporated by reference; see 46 CFR 56.01–2)''.

■ 148. Revise § 56.97–25 section heading to read as follows:

§ 56.97–25 Preparation for testing (reproduces 137.2).

* * * * *

■ 149. Revise § 56.97–30 section heading to read as follows:

§ 56.97–30 Hydrostatic tests (modifies 137.4).

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

■ 150. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 58.01–5 [Amended]

■ 151. In § 58.01–5, remove the words ''the American Bureau of Shipping or other recognized classification society,'' and add, in their place, the words ''the ABS Steel Vessel Rules (incorporated by reference, see 46 CFR 58.03–1)''.

■ 152. Revise § 58.01–10(a)(3) to read as follows:

§ 58.01–10 Fuel oil.

(a) * * *

(3) Subject to such further precautions as the Commanding Officer, Marine Safety Center, considers necessary, and provided that the ambient temperature of the space in which such fuel oil is stored or used does not rise to within 18 °F (10 °C) below the flashpoint of the fuel oil, fuel oil having a flashpoint of less than 140 °F (60 °C) but not less than 110 °F (43 °C) may be used.

* * * * *

■ 153. Revise § 58.01–50(a) to read as follows:

§ 58.01–50 Machinery space, noise.

(a) Each machinery space must be designed to minimize the exposure of personnel to noise in accordance with IMO A.468(XII) (incorporated by reference, see 46 CFR 58.03–1). No person may encounter a 24-hour effective noise level greater than 82 dB(A) when noise is measured using a sound-level meter and an A-weighting filter.

* * * * *

■ 154. Revise § 58.03–1 to read as follows:

§ 58.03–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. This material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Boat and Yacht Council (ABYC),* 613 Third Street, Suite 10, Annapolis, MD 21403:

(1) P–1–73, Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1973 (''ABYC P–1''), 58.10–5; and

(2) [Reserved]

(c) *American Bureau of Shipping (ABS),* ABS Plaza, 16855 Northchase Drive, Houston, TX 77060.

(1) Rules for Building and Classing Steel Vessels, Part 4 Vessel Systems and Machinery (2003) (''ABS Steel Vessel Rules''), 58.01–5; 58.05–1; 58.10–15; 58.20–5; 58.25–5; and

(2) [Reserved]

(d) *American National Standards Institute (ANSI),* 11 West 42nd Street, New York, NY 10036:

(1) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (''ANSI B31.3''), 58.60–7;

(2) ANSI B31.5, Refrigeration Piping, 1987 (''ANSI B31.5''), 58.20–5; 58.20–20; and

(3) ANSI B93.5, Recommended practice for the use of Fire Resistant Fluids for Fluid Power Systems, 1979 (''ANSI B93.5''), 58.30–10.

(e) *American Petroleum Institute (API),* 1220 L Street, NW., Washington, DC 20005–4070:

(1) API RP 14C, Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, 1986 (''API RP 14C''), 58.60–9; and

(2) API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells, 1984 (''API RP 53''), 58.60–7.

(f) *American Society of Mechanical Engineers (ASME) International,* Three Park Avenue, New York, NY 10016–5990:

(1) 2001 ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers (July 1, 2001) (''Section I of the ASME Boiler and Pressure Vessel Code''), 58.30–15; and

(2) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, Rules for Construction of Pressure Vessels (1998 with 1999 and 2000 addenda) (''Section VIII of the ASME Boiler and Pressure Vessel Code''), 58.30–15.

(g) *ASTM International (formerly American Society for Testing and Materials) (ASTM),* 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:

(1) ASTM A 193/A 193M–98a, Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service (''ASTM A 193''), 58.30–15;

(2) ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels (''ASTM B 96''), 58.50–5;

(3) ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip, and Rolled Bar (''ASTM B 122''), 58.50–5;

(4) ASTM B 127–93a, Standard Specification for Nickel-Copper Alloy (UNS NO4400) Plate, Sheet, and Strip (''ASTM B 127''), 58.50–5; 58.50–10;

(5) ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar (''ASTM B 152''), 58.50–5;

(6) ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate (''ASTM B 209''), 58.50–5; 58.50–10;

(7) ASTM D 92–97, Standard Test Method for Flash and Fire Points by Cleveland Open Cup (''ASTM D 92''), 58.30–10;

(8) ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester (''ASTM D 93''), 58.01–10; and

(9) ASTM D 323–94, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method) (''ASTM D 323''), 58.16–5.

(h) *International Maritime Organization (IMO),* Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom:

(1) A.467(XII), Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tonnes Deadweight, 1981 (''IMO A.467(XII)''), 58.25–60; and

(2) A.468(XII), Code on Noise Levels on Board Ships, 1981 (''IMO A.468(XII)''), 58.01–50.

(i) *National Fire Protection Association (NFPA),* 1 Batterymarch Park, Quincy, MA 02169:

(1) NFPA 302, Fire Protection Standard for Pleasure and Commercial Craft, 1989 (''NFPA 302''), 58.10–5; and

(2) [Reserved]

(j) *Society of Automotive Engineers (SAE),* 400 Commonwealth Drive, Warrendale, PA 15096:

(1) SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, 1989 (''SAE J–1928''), 58.10–5; and

(2) SAE J429, Mechanical and Material Requirements for Externally Threaded Fasteners (Aug. 1983) (''SAE J429''), 58.30–15.

(k) *Underwriters Laboratories, Inc. (UL),* 12 Laboratory Drive, Research Triangle Park, NC 27709:

(1) UL 1111, Marine Carburetor Flame Arresters, 1988 (''UL 1111''), 58.10–5; and

(2) [Reserved]

■ 155. Revise § 58.05–1 to read as follows:

§ 58.05–1 Material, design and construction.

(a) The material, design, construction, workmanship, and arrangement of main propulsion machinery and of each auxiliary, directly connected to the engine and supplied as such, must be at least equivalent to the standards established by the ABS Steel Vessel Rules (incorporated by reference, see 46 CFR 58.03–1), except as otherwise provided by this subchapter.

(b) When main and auxiliary machinery is to be installed without classification society review, the builder shall submit in quadruplicate to the cognizant Officer in Charge, Marine Inspection, such drawings and particulars of the installation as are required by the American Bureau of Shipping Rules for Building and Classing Steel Vessels, Part 4 Vessel Systems and Machinery (2003) for similar installations on classed vessels.

■ 156. Revise § 58.10–5(b)(3)(i) and (d)(1) introductory text to read as follows:

§ 58.10–5 Gasoline engine installations.

* * * * *

(b) * * *

(3) * * *

(i) A backfire flame arrester complying with SAE J–1928 (incorporated by reference; see 46 CFR 58.03–1) or UL 1111 (incorporated by reference; see 46 CFR 58.03–1) and marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.

* * * * *

(d) *Exhaust pipe.* (1) Exhaust pipe installations must conform to the requirements of ABYC P–1 and part 1, section 23 of NFPA 302 (both incorporated by reference; see 46 CFR 58.03–1) and the following additional requirements:

* * * * *

§ 58.10–15 [Amended]

■ 157. In § 58.10–15(a), remove the words ''the American Bureau of Shipping or other recognized classification society'' and add, in their place, the words ''the ABS Steel Vessel Rules (incorporated by reference, see 46 CFR 58.03–1)''.

■ 158. Revise § 58.16–10(b)(1) and (c) to read as follows:

§ 58.16–10 Approvals.

* * * * *

(b) * * *

(1) Cylinders in which liquefied petroleum gas is stored and handled must be constructed, tested, marked, maintained, and retested in accordance with 49 CFR part 178.

* * * * *

(c) *Safety-relief devices.* All required safety-relief devices must be approved as to type, size, pressure setting, and location by the Commandant (CG–521) as being in accordance with 49 CFR part 178.

* * * * *

■ 159. Revise § 58.20–5(a) to read as follows:

§ 58.20–5 Design.

(a) Refrigeration machinery may be accepted for installation provided the design, material, and fabrication comply with the applicable requirements of the ABS Steel Vessel Rules (incorporated by reference, see 46 CFR 58.03–1). The minimum pressures for design of all components must be those listed for piping in Table 501.2.4 of ANSI B31.5 (incorporated by reference; see 46 CFR 58.03–1). In no case may pressure components be designed for a pressure less than that for which the safety devices of the system are set. Pressure vessels must be designed in accordance with part 54 of this subchapter.

* * * * *

§ 58.20–20 [Amended]

■ 160. In § 58.20–20(b), remove the term ''ANSI–B31.5'' and add, in its place, the words ''ANSI B31.5 (incorporated by reference; see 46 CFR 58.03–1)''.

§ 58.25–5 [Amended]

■ 161. In § 58.25–5(d), remove the words, ''the American Bureau of Shipping or other recognized classification society,'' and add, in their place, the words ''the ABS Steel Vessel Rules (incorporated by reference, see 46 CFR 58.03–1)''.

■ 162. Revise § 58.25–60 to read as follows:

§ 58.25–60 Non-duplicated hydraulic rudder actuators.

Non-duplicated hydraulic rudder actuators may be installed in the steering-gear control systems on each vessel of less than 100,000 deadweight tons. These actuators must meet IMO A.467(XII) (incorporated by reference, see 46 CFR 58.03–1) and be acceptable to the Commanding Officer, Marine Safety Center. Also, the piping for the main gear must comply with 46 CFR 58.25–10(e)(3).

§ 58.30–10 [Amended]

■ 163. In § 58.30–10(e), remove the words, ''ANSI–B93.5 (Recommended Practice for the Use of Fire Resistant Fluids for Fluid Power Systems)'' and, in their place, add the words ''ANSI B93.5 (incorporated by reference; see 46 CFR 58.03–1)''.

■ 164. Revise § 58.30–15(b) and (c) to read as follows:

§ 58.30–15 Pipe, tubing, valves, fittings, pumps, and motors.

* * * * *

(b) Materials used in the manufacture of tubing, pipes, valves, flanges, and fittings shall be selected from those specifications that appear in 46 CFR 56.60–1, Table 56.60–1(a) or 46 CFR 56.60–2, Table 56.60–2(a); or they may be selected from the material specifications of Section I or Section VIII of the ASME Boiler and Pressure Vessel Code (both incorporated by reference; see 46 CFR 58.03–1) if not prohibited by the section of this subchapter dealing with the particular section of the ASME Boiler and Pressure Vessel Code. Materials designated by other specifications shall be evaluated on the basis of physical and chemical properties. To assure these properties, the specifications shall specify and require such physical and chemical testing as considered necessary by the Commandant. All tubing and pipe materials shall be suitable for handling the hydraulic fluid used and shall be of such chemical and physical properties as to remain ductile at the lowest operating temperature.

(c) Bolting shall meet the requirements of 46 CFR 56.25–20 except that regular hexagon bolts conforming to SAE J429, grades 2 through 8 (incorporated by reference, see 46 CFR 58.03–1), or ASTM A 193 (incorporated by reference, see 46 CFR 58.03–1) may be used in sizes not exceeding 1½ inches.

* * * * *

■ 165. Revise table 58.50–5(a) to read as follows:

§ 58.50–5 Gasoline fuel tanks.

(a) * * *

TABLE 58.50–5(a)

Material	ASTM specification (all incorporated by reference; see 46 CFR 58.03–1)	Thickness in inches and gage numbers [1] vs. tank capacities for—		
		1- through 80-gallon tanks	More than 80- and not more than 150-gallon tanks	Over 150-gallon tanks [2]
Aluminum [5]	B 209, Alloy 5086 [6]	0.250 (USSG 3)	0.250 (USSG 3)	0.250 (USSG 3).
Nickel-copper	B 127, Hot rolled sheet or plate	0.037 (USSG 20).[3]	0.050 (USSG 18)	0.107 (USSG 12).
Copper-nickel	B 122, Alloy No. 5	0.045 (AWG 17)	0.057 (AWG 15)	0.128 (AWG 8).
Copper	B 152, Type ETP	0.057 (AWG 15)	0.080 (AWG 12)	0.182 (AWG 5).
Copper-silicon	B 96, alloys C65100 and C65500	0.050 (AWG 16)	0.064 (AWG 14)	0.144 (AWG 7).
Steel or iron [4]		0.0747 (MfgStd 14)	0.1046 (MfgStd 12)	0.179 (MfgStd 7).

[1] Gauges used are U.S. standard ''USSG'' for aluminum and nickel-copper; ''AWG'' for copper, copper-nickel and copper-silicon; and ''MfgStd'' for steel.
[2] Tanks over 400 gallons shall be designed with a factor of safety of four on the ultimate strength of the material used with a design head of not less than 4 feet of liquid above the top of the tank.
[3] Nickel-copper not less than 0.031 inch (USSG 22) may be used for tanks up to 30-gallon capacity.
[4] Fuel tanks constructed of iron or steel, which is less than 3/16-inch thick shall be galvanized inside and outside by the hot dip process.
[5] Anodic to most common metals. Avoid dissimilar metal contact with tank body.
[6] And other alloys acceptable to the Commandant.

* * * * *

■ 166. Revise table 58.50–10(a) to read as follows:

§ 58.50–10 Diesel fuel tanks.

(a) * * *

TABLE 58.50–10(a)

Material	ASTM specification (all incorporated by reference; see 46 CFR 58.03–1)	Thickness in inches and gage numbers [1] vs. tank capacities for—		
		1- through 80-gallon tanks	More than 80- and not more than 150-gallon tanks	Over 150-gallon tanks [2]
Aluminum [5]	B 209, Alloy 5086 [6]	0.250 (USSG 3)	0.250 (USSG 3)	0.250 (USSG 3).
Nickel-copper	B 127, Hot rolled sheet or plate	0.037 (USSG 20).[3]	0.050 (USSG 18)	0.107 (USSG 12).
Steel or iron [4]		0.0747 (MfgStd 14)	0.1046 (MfgStd 12)	0.179 (MfgStd 7).

[1] Gauges used are U.S. standard ''USSG'' for aluminum and nickel-copper and ''MfgStd'' for steel or iron.
[2] Tanks over 400 gallons shall be designed with a factor of safety of four on the ultimate strength of the material used with design head of not less than 4 feet of liquid above the top of the tank.
[3] Nickel-copper not less than 0.031 inch (USSG 22) may be used for tanks up to 30-gallon capacity.
[4] For diesel tanks the steel or iron shall not be galvanized on the interior.
[5] Anodic to most common metals. Avoid dissimilar metal contact with tank body.
[6] And other alloys acceptable to the Commandant.

* * * * *

■ 167. Revise § 58.50–15 to read as follows:

§ 58.50–15 Alternate material for construction of independent fuel tanks.

(a) Materials other than those specifically listed in 46 CFR 58.50–5, Table 58.50–5(a) and in 46 CFR 58.50–10, Table 58.50–10(a) may be used for fuel tank construction only if the tank as constructed meets material and testing requirements approved by the Commandant (CG–521). Approved testing may be accomplished by any acceptable laboratory, such as the Marine Department, Underwriters' Laboratories, Inc., or may be done by the fabricator if witnessed by a marine inspector.

(b) [Reserved]

■ 168. Revise § 58.60–7 to read as follows:

§ 58.60–7 Industrial systems: Piping.

The piping for industrial systems under this subpart must meet ANSI B31.3 (incorporated by reference, see 46 CFR 58.03–1), except that blow out preventor control systems must also meet API RP 53 (incorporated by reference, see 46 CFR 58.03–1).

■ 169. Revise § 58.60–9 to read as follows:

§ 58.60–9 Industrial systems: Design.

Each system under this subpart must be designed and analyzed in accordance with the principles of API RP 14C (incorporated by reference, see 46 CFR 58.03–1).

PART 59—REPAIRS TO BOILERS, PRESSURE VESSELS AND APPURTENANCES

■ 170. The authority citation for part 59 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; Department of Homeland Security Delegation No. 0170.1.

■ 171. Revise § 59.01–2 to read as follows:

§ 59.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–

0001, and is available from the sources listed below.

(b) *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990:

(1) 2001 ASME Boiler and Pressure Vessel Code, Section I, Rules for Construction of Power Boilers (July 1, 2001) (''Section I of the ASME Boiler and Pressure Vessel Code''), 59.10–5;

(2) ASME Boiler and Pressure Vessel Code, Section VII, Recommended Guidelines for the Care of Power Boilers (July 1, 2001) (''Section VII of the ASME Boiler and Pressure Vessel Code''), 59.01–5;

(3) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, Rules for Construction of Pressure Vessels (1998 with 1999 and 2000 addenda) (''Section VIII of the ASME Boiler and Pressure Vessel Code''), 59.10–5; 59.10–10; and

(4) ASME Boiler and Pressure Vessel Code, Section IX, Welding and Brazing Qualifications (1998) (''Section IX of the ASME Boiler and Pressure Vessel Code''), 59.10–5.

§ 59.01–3 [Removed]

■ 172. Remove § 59.01–3.

■ 173. Revise § 59.01–5(e) to read as follows:

§ 59.01–5 Repairs, replacements, or alterations.

* * * * *

(e) Where applicable, manufacturers' instruction books, manuals, and the like, and section VII of the ASME Boiler and Pressure Vessel Code (incorporated by reference; see 46 CFR 59.01–2) must be used for guidance.

§ 59.10–5 [Amended]

■ 174. In § 59.10–5—

■ a. In paragraph (i), remove the term ''ASME Code'' and, in its place, add the words ''ASME Boiler and Pressure Vessel Code (all incorporated by reference; see 46 CFR 59.01–2)''; and

■ b. In paragraphs (j) and (k), remove the words ''ASME Code'' wherever they appear and, in their place, add the words ''ASME Boiler and Pressure Vessel Code''.

§ 59.10–10 [Amended]

■ 175. In § 59.10–10(f), remove the words ''section VIII, ASME Code'' and, in their place, add the words ''section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see 46 CFR 59.01–2)''.

PART 61—PERIODIC TESTS AND INSPECTIONS

■ 176. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 177. Revise § 61.15–10 section heading and paragraph (b) to read as follows:

§ 61.15–10 Liquefied-petroleum-gas piping for heating and cooking.

* * * * *

(b) Test the system for leakage in accordance with the following procedure: With the appliance valve closed, the master shutoff valve on the appliance open, and one cylinder valve open, note pressure in gauge.

PART 62—VITAL SYSTEM AUTOMATION

■ 178. The authority citation for part 62 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 179. Revise § 62.05–1 to read as follows:

§ 62.05–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Bureau of Shipping (ABS)*, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060:

(1) Rules for Building and Classing Steel Vessels, Part 4 Vessel Systems and Machinery (2003) (''ABS Steel Vessel Rules''), 62.25–30; 62.35–5; 62.35–35; 62.35–40; 62.35–50; 62.50–30; and

(2) [Reserved]

■ 180. Revise § 62.25–1(c) to read as follows:

§ 62.25–1 General.

* * * * *

(c) Each console for a vital control or alarm system and any similar enclosure that relies upon forced cooling for proper operation of the system must have a backup means of providing cooling. It must also have an alarm activated by the failure of the temperature-control system.

■ 181. Revise § 62.25–5(a) to read as follows:

§ 62.25–5 All control systems.

(a) Local and remote starting for any propulsion engine or turbine equipped with a jacking or turning gear must be prevented while the turning gear is engaged.

* * * * *

■ 182. Revise § 62.25–30(a)(1), (2), (3), and (5) to read as follows:

§ 62.25–30 Environmental design standards.

(a) * * *

(1) Ship motion and vibration described in Table 9 of section 4–9–7 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 62.05–1); note that inclination requirements for fire and flooding safety systems are described in 46 CFR 112.05–5(c).

(2) Ambient air temperatures described in Table 9 of part 4–9–7 of the ABS Steel Vessel Rules.

(3) Electrical voltage and frequency tolerances described in Table 9 of part 4–9–7 of the ABS Steel Vessel Rules.

* * * * *

(5) Hydraulic and pneumatic pressure variations described in Table 9 of part 4–9–7 of the ABS Steel Vessel Rules.

* * * * *

■ 183. Revise § 62.35–5 section heading and paragraph (d) to read as follows:

§ 62.35–5 Remote propulsion-control systems.

* * * * *

(d) *Transfer of control location.* Transfer of control location must meet section 4–9–2/5.11 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 62.05–1). Manual alternative-propulsion-control locations must be capable of overriding, and of operating independent of, all remote and automatic propulsion-control locations.

* * * * *

■ 184. Revise § 62.35–35 to read as follows:

§ 62.35–35 Starting systems for internal-combustion engines.

The starting systems for propulsion engines and for prime movers of ships' service generators required to start

automatically must meet sections 4–6–5/9.5 and 4–8–2/11.11 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 62.05–1).

■ 185. Revise § 62.35–40(c) to read as follows:

§ 62.35–40 Fuel systems.

* * * * *

(c) *Automatic fuel heating.* Automatic fuel heating must meet section 4–9–3/15.1 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 62.05–1).

* * * * *

■ 186. Amend § 62.35–50 by revising footnotes 1, 2, 8, and 9 following Table 62.35–50, and, in the notes on Table 62.35–50, by revising 1 and 9 to read as follows:

§ 62.35–50 Tabulated monitoring and safety control requirements for specific systems.

* * * * *

TABLE 62.35–50—MINIMUM SYSTEM MONITORING AND SAFETY CONTROL REQUIREMENTS FOR SPECIFIC SYSTEMS (NOTE 1)

* * * * *

[1] See the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 62.05–1) Part 4–9–4, tables 7A and 8.

[2] See ABS Steel Vessel Rules Part 4–9–4, tables 7A and 8.

* * * * *

[8] See ABS Steel Vessel Rules Part 4–9–4, Table 8; and 46 CFR 58.10–15(f).

[9] See ABS Steel Vessel Rules Part 4–9–4, tables 7A and 8.

Notes on Table 62.35–50:

1. The monitoring and controls listed in this table are applicable if the system listed is provided or required.

* * * * *

9. Main and remote control stations, including the navigational bridge, must provide visual and audible alarms in the event of a fire in the main machinery space.

* * * * *

■ 187. Revise § 62.50–30(c) and the introductory text of paragraph (k) to read as follows:

§ 62.50–30 Additional requirements for periodically unattended machinery plants.

* * * * *

(c) *Fuel systems.* Each system for the service or treatment of fuel must meet section 4–6–4/13.5 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 62.05–1).

* * * * *

(k) *Continuity of electrical power.* The electrical plant must meet sections 4–8–2/3.11 and 4.8.2/9.9 of the ABS Steel Vessel Rules, and must:

* * * * *

PART 63—AUTOMATIC AUXILIARY BOILERS

■ 188. The authority citation for part 63 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 189. Revise § 63.05–1 to read as follows:

§ 63.05–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Gas Association*, 1515 Wilson Boulevard, Arlington, VA 22209:

(1) ANSI/AGA Z21.22–86 Relief Valves and Automatic Shutoff Devices for Hot Water Supply Systems, March 28, 1986 (''ANSI/AGA Z21.22''), 63.25–3; and

(2) [Reserved]

(c) *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990:

(1) ASME CSD–1–2004, Controls and Safety Devices for Automatically Fired Boilers (2004) (''ASME CSD–1''), 63.10–1; 63.15–1; 63.20–1; and

(2) [Reserved]

(d) *ASTM International (formerly American Society for Testing and Materials) (ASTM)*, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:

(1) ASTM F 1323–2001, Standard Specification for Shipboard Incinerators (2001) (''ASTM F 1323''), 63.25–9; and

(2) [Reserved]

(e) *International Maritime Organization (IMO)*, Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom:

(1) Resolution MEPC.76(40), Standard Specification for Shipboard Incinerators (Sep. 25, 1997) (''IMO MEPC.76(40)''), 63.25–9; and

(2) The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Annexes I, II, III, and V (1978) (''IMO MARPOL 73/78''), 63.25–9

(f) *International Organization for Standardization (ISO)*, Case postale 56, CH–1211 Geneva 20, Switzerland:

(1) ISO 9096, Stationary source emissions—Manual determination of mass concentration of particulate matter, Second edition (Feb. 1, 2003) (''ISO 9096''), 63.25–9;

(2) ISO 10396, Stationary source emissions—Sampling for the automated determination of gas emission concentrations for permanently-installed monitoring systems, Second edition (Feb. 1, 2007) (''ISO 10396''), 63.25–9; and

(3) ISO 13617, Shipbuilding-Shipboard Incinerators—Requirements, Second Edition (Nov. 15, 2001) (''ISO 13617''), 63.25–9.

(g) *Underwriters' Laboratories, Inc. (UL)*, 12 Laboratory Drive, Research Triangle Park, NC 27709–3995:

(1) UL 174, Standard for Household Electric Storage Tank Water Heaters, Tenth Edition, Feb. 28, 1996 (Revisions through and including Nov. 10, 1997) (''UL 174''), 63.25–3;

(2) UL 296, Oil Burners (1993) (''UL 296''), 63.15–5;

(3) UL 343, Pumps for Oil-Burning Appliances, Eighth Edition (May 27, 1997) (''UL 343''), 63.15–3; and

(4) UL 1453, Standard for Electric Booster and Commercial Storage Tank Water Heaters, Fourth Edition (Sep. 1, 1995) (''UL 1453''), 63.25–3.

■ 190. Amend § 63.10–1 by revising the introductory text and paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 63.10–1 Test procedures and certification report.

Two copies of the following items must be submitted. Visitors may deliver them to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street, SW., Suite 1000, Room 525, Washington, DC 20024, or they may be transmitted by mail to Commanding Officer, U.S. Coast Guard Marine Safety Center, JR10–0525, 2100 2nd Street, SW., Washington, DC 20593, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.*

(a) Detailed instructions for operationally testing each automatic auxiliary boiler, its controls, and safety devices.

(b) A certification report for each automatic auxiliary boiler that:

(1) Meets paragraph CG–510 of ASME CSD–1 (incorporated by reference, see 46 CFR 63.05–1); and

* * * * *

■ 191. Revise § 63.15–1(b) to read as follows:

§ 63.15–1 General.

* * * * *

(b) Controls and safety devices for automatic auxiliary boilers must meet the applicable requirements of ASME CSD–1 (incorporated by reference, see 46 CFR 63.05–1), except Paragraph CG–310.

* * * * *

■ 192. Revise § 63.15–3(e) to read as follows:

§ 63.15–3 Fuel system.

* * * * *

(e) When properly selected for the intended service, fuel pumps meeting the performance and test requirements of UL 343 (incorporated by reference, see 46 CFR 63.05–1) meet the requirements of this section.

■ 193. Revise § 63.15–5(c) to read as follows:

§ 63.15–5 Strainers.

* * * * *

(c) The strainer must meet the requirements for strainers found in UL 296 (incorporated by reference, see 46 CFR 63.05–1) and the requirements for fluid conditioner fittings found in 46 CFR 56.15–5.

■ 194. Revise § 63.20–1 introductory paragraph to read as follows:

§ 63.20–1 Specific control system requirements.

In addition to the requirements found in ASME CSD–1 (incorporated by reference; see 46 CFR 63.05–1), the following requirements apply for specific control systems:

* * * * *

■ 195. Amend § 63.25–1 introductory paragraph to read as follows:

§ 63.25–1 Small automatic auxiliary boilers.

Small automatic auxiliary boilers defined as having heat-input ratings of 400,000 Btu/hr. or less (117 kilowatts or less) must also meet the following requirements.

* * * * *

■ 196. Revise § 63.25–3 paragraphs (a) and (j) to read as follows:

§ 63.25–3 Electric hot water supply boilers.

(a) Electric hot water supply boilers that have a capacity not greater than 454 liters (120 U.S. gallons), a heat input rate not greater than 200,000 Btu/hr. (58.6 kilowatts), meet the requirements of UL 174 or UL 1453 (both incorporated by reference, see 46 CFR 63.05–1), and are protected by the relief device(s) required in 46 CFR 53.05–2 do not have to meet any other requirements of this section except the periodic testing required by paragraph (j) of this section. Electric hot water supply boilers that meet the requirements of UL 174 may have temperature-pressure relief valves that meet the requirements of ANSI/AGA Z21.22 (incorporated by reference, see 46 CFR 63.05–1) in lieu of 46 CFR subpart 53.05.

* * * * *

(j) All electric hot water supply boilers must have their pressure relief devices tested as required by 46 CFR part 52 or part 53, as applicable. Electric hot water supply boilers that meet the requirements of UL 174 or UL 1453 and have heating elements, temperature regulating controls, and temperature limiting controls are satisfactory for installation and service without further installation testing. All electric hot water supply boilers not meeting the requirements of UL 174 or UL 1453 must have their heating elements, temperature regulating controls, and temperature limiting controls tested by the marine inspector at the time of installation.

■ 197. Revise § 63.25–9 to read as follows:

§ 63.25–9 Incinerators.

(a) *General.* Incinerators installed on or after March 26, 1998, must meet the requirements of IMO MEPC.76(40) (incorporated by reference; see 46 CFR 63.05–1). Incinerators in compliance with ISO 13617 (incorporated by reference; see 46 CFR 63.05–1), are considered to meet IMO MEPC.76(40). Incinerators in compliance with both ASTM F 1323 (incorporated by reference; see 46 CFR 63.05–1) and Annexes A1–A3 of IMO MEPC.76(40) are considered to meet IMO MEPC.76(40). An application for type approval of shipboard incinerators must be sent to the Commanding Officer (MSC), USCG Marine Safety Center, 1900 Half Street, SW., Suite 1000, Room 525, Washington, DC 20593.

(b) *Testing.* Before type approval is granted, the manufacturer must have tests conducted, or submit evidence that such tests have been conducted by an independent laboratory acceptable to the Commandant (CG–521). The laboratory must:

(1) Have the equipment and facilities for conducting the inspections and tests required by this section;

(2) Have experienced and qualified personnel to conduct the inspections and tests required by this section;

(3) Have documentary proof of the laboratory's qualifications to perform the inspections and tests required by this section; and

(4) Not be owned or controlled by a manufacturer, supplier, or vendor of shipboard incinerators.

(c) *Prohibited substances.* Shipboard incineration of the following substances is prohibited:

(1) Annex I, II, and III cargo residues of IMO MARPOL 73/78 (incorporated by reference; see 46 CFR 63.05–1) and related contaminated packing materials.

(2) Polychlorinated biphenyls (PCBs).

(3) Garbage, as defined in Annex V of IMO MARPOL 73/78, containing more than traces of heavy metals.

(4) Refined petroleum products containing halogen compounds.

(d) *Operating manual.* Each ship with an incinerator subject to this rule must possess a manufacturer's operating manual, which must specify how to operate the incinerator within the limits described in Annex A1.5 of IMO MEPC.76(40).

(e) *Training.* Each person responsible for operating any incinerator must be trained and be capable of implementing the guidance provided in the manufacturer's operating manual.

(f) *Acceptable methods and standards for testing emissions.* The methods and standards for testing emissions that the laboratory may use in determining emissions-related information described in Annex A1.5 of IMO MEPC.76(40) are:

(1) 40 CFR part 60 Appendix A, Method 1–Sample and velocity traverses for stationary sources;

(2) 40 CFR part 60 Appendix A, Method 3A–Determination of oxygen and carbon dioxide concentrations in emissions from stationary sources (instrumental-analyzer procedure);

(3) 40 CFR part 60 Appendix A, Method 5–Determination of particulate emissions from stationary sources;

(4) 40 CFR part 60 Appendix A, Method 9–Visual determination of the opacity of emissions from stationary sources;

(5) 40 CFR part 60 Appendix A, Method 10–Determination of carbon-monoxide emissions from stationary sources;

(6) ISO 9096 (incorporated by reference; see 46 CFR 63.05–1); and

(7) ISO 10396 (incorporated by reference; see 46 CFR 63.05–1).

PART 76—FIRE PROTECTION EQUIPMENT

■ 198. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 199. Revise § 76.01–2 to read as follows:

§ 76.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. ASTM F 1121–87 (1993), Standard Specification for International Shore Connections for Marine Fire Applications (''ASTM F 1121'')—76.10–10.

(c) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–9101. NFPA 13–1996, Standard for the Installation of Sprinkler Systems (''NFPA 13'')—76.25–1, 76.25–90.

(d) *Underwriters Laboratories Inc. (UL),* 12 Laboratory Drive, Research Triangle Park, NC 27709–3995. UL 19 Standard for Safety, Lined Fire Hose and Hose Assemblies (2001) (''UL 19''), § 76.10–10.

■ 200. Revise § 76.10–10(n)(2) to read as follows:

§ 76.10–10 Fire station hydrants, hose and nozzles-T/ALL.

* * * * *

(n) * * *

(2) Each section of firehose must be lined commercial firehose that conforms to UL 19 (incorporated by reference; see 46 CFR 76.01–2). Hose that bears the label of Underwriters' Laboratories, Inc. as lined firehose is accepted as conforming to this requirement.

■ 201. Revise § 76.25–1 to read as follows:

§ 76.25–1 Application.

Where an automatic sprinkling system is installed, the systems must comply with NFPA 13 (incorporated by reference; see 46 CFR 76.01–2).

■ 202. Revise § 76.25–90(b) to read as follows:

§ 76.25–90 Installations contracted for prior to September 30, 1997.

* * * * *

(b) The details of the system must be in general agreement with NFPA 13 (incorporated by reference, see 46 CFR 76.01–2) insofar as is reasonable and practicable. Existing piping, pumping facilities, sprinkler heads, and operating devices may be retained provided a reasonable coverage of the spaces protected is assured.

■ 203. Amend § 76.50–5 by revising table 76.50–5(c) to read as follows:

§ 76.50–5 Classification.

* * * * *

(c) * * *

TABLE 76.50–5(c)

Classification		Soda acid and water, liters (gallons)	Foam, liters (gallons)	Carbon dioxide, kilograms (pounds)	Dry chemical, kilograms (pounds)
Type	Size				
A	II	9.5 (2.5)	9.5 (2.5)	.....	.....
B	I	.....	4.75 (1.25)	1.8 (4)	.....
B	II	.....	9.5 (2.5)	6.8 (15)	4.5 (10)
B	III	.....	45.5 (12)	15.9 (35)	9.0 (20)
B	IV	.....	76 (20)	22.7 (50)	13.6 (30)
B	V	.....	151 (40)	45.3 (100)	22.7 (50)
C	I	.....	.....	1.8 (4)	1 (2)
C	II	.....	.....	6.8 (15)	4.5 (10)

* * * * *

PART 92—CONSTRUCTION AND ARRANGEMENT

■ 204. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 205. Add § 92–01–2 to read as follows:

§ 92.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *International Maritime Organization (IMO),* Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom: International Convention for the Safety of Life at Sea (SOLAS), Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1988: Article, Annexes and Certificates. (Incorporating all Amendments in Effect from January 2001) (2001) (''IMO SOLAS 74''), 92.07–1.

■ 206. Revise § 92.07–1(c) to read as follows:

§ 92.07–1 Application.

* * * * *

(c) SOLAS-certificated vessels complying with method IC, as described

in IMO SOLAS 74 (incorporated by reference; see 46 CFR 92.01–2), regulation II–2/42, may be considered equivalent to the provisions of this subpart.

■ 207. Revise paragraph (d) to read as follows:

§ 92.15–10 Ventilation for closed spaces.

* * * * *

(d) The ventilation of spaces that are ''specially suitable for vehicles'' shall be in accordance with §§ 97.80–1, 111.105–39 and 111.105–40 of this chapter, as applicable.

* * * * *

PART 110—GENERAL PROVISIONS

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

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; § 110.01–2 also issued under 44 U.S.C. 3507.

■ 209. Revise § 110.10–1 to read as follows:

§ 110.10–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. The word ''should,'' when used in material incorporated by reference, is to be construed the same as the words ''must'' or ''shall'' for the purposes of this subchapter. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *American Bureau of Shipping (ABS),* ABS Plaza, 16855 Northchase Drive, Houston, TX 77060:

(1) Rules for Building and Classing Steel Vessels, Part 4 Vessel Systems and Machinery (2003) (''ABS Steel Vessel Rules''), 110.15–1; 111.01–9; 111.12–3; 111.12–5; 111.12–7; 111.33–11; 111.35–1; 111.70–1; 111.105–31; 111.105–39; 111.105–40; 113.05–7; and

(2) Rules for Building and Classing Mobile Offshore Drilling Units, Part 4 Machinery and Systems (2001) (''ABS MODU Rules''), 111.12–1; 111.12–3; 111.12–5; 111.12–7; 111.33–11; 111.35–1; 111.70–1.

(c) *American National Standards Institute (ANSI),* 25 West 43rd Street, New York, NY 10036:

(1) ANSI/IEEE C37.12–1991, American National Standard for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis-Specifications Guide (1991) (''ANSI/IEEE C37.12''), 111.54–1; and

(2) ANSI/IEEE C37.27–1987 (IEEE Std 331) Application Guide for Low-Voltage AC Nonintegrally Fused Power Circuitbreakers (Using Separately Mounted Current-Limiting Fuses) (1987) (''ANSI/IEEE C37.27''), 111.54–1;

(d) *American Society of Mechanical Engineers (ASME) International,* Three Park Avenue, New York, NY 10016–5990:

(1) ASME A17.1–2000 Part 2 Electric Elevators (2000) (''ASME A17.1''), 111.91–1; and

(2) [Reserved]

(e) *ASTM International (formerly American Society for Testing and Materials) (ASTM),* 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:

(1) ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus (''ASTM B 117''), 110.15–1; and

(2) [Reserved]

(f) *Institute of Electrical and Electronic Engineers IEEE),* IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854:

(1) IEEE Std C37.04–1999, IEEE Standard Rating Structure for AC High-Voltage Circuit Breakers (1999) (''IEEE C37.04''), 111.54–1;

(2) IEEE Std C37.010–1999 IEEE Application Guide for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis (1999) (''IEEE C37.010''), 111.54–1;

(3) IEEE Std C37.13–1990 IEEE Standard for Low-Voltage AC Power Circuit Breakers Used in Enclosures (Oct. 22, 1990) (''IEEE C37.13''), 111.54–1;

(4) IEEE Std C37.14–2002 IEEE Standard for Low-Voltage DC Power Circuit Breakers Used in Enclosures (Apr. 25, 2003) (''IEEE C37.14''), 111.54–1;

(5) IEEE Std 45–1998 IEEE Recommended Practice for Electric Installations on Shipboard—1998 (Oct. 19, 1998) (''IEEE 45–1998''), 111.30–19; 111.105–3; 111.105–31; 111.105–41;

(6) IEEE Std 45–2002 IEEE Recommended Practice for Electrical Installations On Shipboard—2002 (Oct. 11, 2002) (''IEEE 45–2002''), 111.05–7; 111.15–2; 111.30–1; 111.30–5; 111.33–3; 111.33–5; 111.40–1; 111.60–1; 111.60–3; 111.60–5; 111.60–11; 111.60–13; 111.60–19; 111.60–21; 111.60–23; 111.75–5; 113.65–5;

(7) IEEE 100, The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition (2000) (''IEEE 100''), 110.15–1;

(8) [Reserved]

(9) IEEE Std 1202–1991, IEEE Standard for Flame Testing of Cables for Use in Cable Tray in Industrial and Commercial Occupancies (May 29, 1991) (''IEEE 1202''), 111.60–6; 111.107–1; and

(10) IEEE Std 1580–2001, IEEE Recommended Practice for Marine Cable for Use on Shipboard and Fixed or Floating Platforms (Dec. 17, 2001) (''IEEE 1580''), 111.60–1; 111.60–2; 111.60–3.

(g) *International Electrotechnical Commission (IEC),* 3 Rue de Varembe, Geneva, Switzerland:

(1) IEC 68–2–52, Environmental Testing Part 2: Tests—Test Kb: Salt Mist, Cyclic (Sodium Chloride Solution), Second Edition (1996) (''IEC 68–2–52''), 110.15–1;

(2) IEC 60331–11 Tests for electric cables under fire conditions—Circuit integrity—Part 11: Apparatus—Fire alone at a flame temperature of at least 750 °C, First Edition (1999) (''IEC 60331–11''), 113.30–25;

(3) IEC 60331–21 Tests for Electric Cables Under Fire Conditions—Circuit Integrity—Part 21: Procedures and Requirements—Cables of Rated Voltage up to and Including 0.6/1.0kV, First Edition (1999) (''IEC 60331–21''), 113.30–25;

(4) IEC 332–1 Tests on Electric Cables Under Fire Conditions, Part 1: Test on a Single Vertical Insulated Wire or Cable, Third Edition (1993) (''IEC 332–1''), 111.30–19;

(5) IEC 60332–3–22 Tests on Electric Cables Under Fire Conditions—Part 3–22: Test for Vertical Flame Spread of Vertically-Mounted Bunched Wires or Cables—Category A, First Edition (2000) (''IEC 60332–3–22''), 111.60–1; 111.60–2; 111.60–6; 111.107–1;

(6) IEC 60079–0 Electrical apparatus for Explosive Gas Atmospheres—Part 0: General Requirements (Edition 3.1) (2000) (''IEC 60079–0''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–17;

(7) IEC 60079–1 Electrical Apparatus for Explosive Gas Atmospheres—Part 1: Flameproof Enclosures ''d'' including corr.1, Fourth Edition (June 2001) (''IEC 60079–1''), 111.105–1; 111.105–3;

111.105–5; 111.105–7; 111.105–9; 111.105–17;

(8) IEC 60079–2 Electrical Apparatus for Explosive Gas Atmospheres—Part 2: Pressurized Enclosures ''p'', Fourth Edition (2001) (''IEC 60079–2''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–17;

(9) IEC 60079–5 Electrical Apparatus for Explosive Gas Atmospheres—Part 5: Powder Filling ''q'', Second Edition (1997) (''IEC 60079–5''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

(10) IEC 79–6 Electrical Apparatus for Explosive Gas Atmospheres—Part 6: Oil Immersion ''o'', Second Edition (1995) (''IEC 79–6''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

(11) IEC 60079–7 Electrical Apparatus for Explosive Gas Atmospheres—Part 7: Increased Safety ''e'', Third Edition (2001) (''IEC 60079–7''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

(12) IEC 60079–11 Electrical Apparatus for Explosive Gas Atmospheres—Part 11: Intrinsic Safety ''i'', Fourth Edition (1999) (''IEC 60079–11''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–11; 111.105–17;

(13) IEC 60079–15 Electrical Apparatus for Explosive Gas Atmospheres—Part 15: Type of Protection ''n'', Second Edition (2001) (''IEC 60079–15''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

(14) IEC 79–18 Electrical Apparatus for Explosive Gas Atmospheres—Part 18: Encapsulation ''m'', First Edition (1992) (''IEC 79–18''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

(15) IEC 60092–101 Electrical Installation in Ships, Part 101: Definitions and General Requirements, Edition 4.1 (2002) (''IEC 60092–101''), 110.15–1; 111.81–1;

(16) IEC 92–201 Electrical Installation in Ships, Part 201: System Design-General, Fourth Edition (1994) (''IEC 92–201''), 111.70–3; 111.81–1;

(17) IEC 92–202 Amendment 1 Electrical Installation in Ships, Part 202: System Design-Protection (1996) (''IEC 92–202''), 111.12–7; 111.50–3; 111.53–1; 111.54–1;

(18) IEC 92–301 Amendment 2 Electrical Installation in Ships, Part 301: Equipment-Generators and Motors, (1995) (''IEC 92–301''), 111.12–7; 111.25–5; 111.70–1;

(19) IEC 60092–302 Electrical Installation in Ships, Part 302: Low-Voltage Switchgear and Control Gear Assemblies, Fourth Edition (1997) (''IEC 60092–302''), 111.30–1; 111.30–5; 111.30–19;

(20) IEC 92–303 Electrical Installation in Ships, Part 303: Equipment-Transformers for Power and Lighting, Third Edition (1980) (''IEC 92–303''), 111.20–15;

(21) IEC 92–304 Amendment 1 Electrical Installation in Ships, Part 304: Equipment-Semiconductor Convertors (1995) (''IEC 92–304''), 111.33–3; 111.33–5;

(22) IEC 92–306 Electrical Installation in Ships, Part 306: Equipment-Luminaries and accessories, Third Edition (1980) (''IEC 92–306''), 111.75–20; 111.81–1;

(23) IEC 60092–352 Electrical Installation in Ships—Choice and Installation of Cables for Low-Voltage Power Systems, Second Edition (1997) (''IEC 60092–352''), 111.60–3; 111.60–5; 111.81–1;

(24) IEC 92–353 Electrical Installations in Ships—Part 353: Single and Multicore Non-Radial Field Power Cables with Extruded Solid Insulation for Rated Voltages 1kV and 3kV, Second Edition (1995) (''IEC 92–353''), 111.60–1; 111.60–3; 111.60–5;

(25) IEC 92–401 Electrical Installations in Ships, Part 401: Installation and Test of completed Installation with amendment 1 (1987) and amendment 2 (1997), Third Edition (1980) (''IEC 92–401''), 111.05–9; 111.81–1;

(26) IEC 60092–502 Electrical Installation in Ships, Part 502: Tankers—Special Features (1999) (''IEC 60092–502''), 111.81–1; 111.105–31;

(27) IEC 92–503 Electrical installations in ships, Part 503: Special features: A.C. supply systems with voltages in the range of above 1kV up to and including 11kV, First Edition (1975) (''IEC 92–503''), 111.30–5;

(28) IEC 60529 Degrees of Protection Provided by Enclosures (IP Code), Edition 2.1 (2001) (''IEC 60529''), 110.15–1; 111.01–9; 113.10–7; 113.20–3; 113.25–11; 113.30–25; 113.37–10; 113.40–10; 113.50–5;

(29) IEC 60533 Electrical and Electronic Installations in Ships—Electromagnetic Compatibility, Second Edition (1999) (''IEC 60533''), 113.05–7;

(30) IEC 60947–2 Low-Voltage Switchgear and Controlgear Part 2: Circuit-Breakers, Third Edition (2003) (''IEC 60947–2''), 111.54–1;

(31) IEC 61363–1 Electrical Installations of Ships and Mobile and Fixed Offshore Units—Part 1: Procedures for Calculating Short-Circuit Currents in Three-Phase a.c., First Edition (1998) (''IEC 61363–1''), 111.52–5; and

(32) IEC 62271–100, High-voltage switchgear and controlgear—part 100: High-voltage alternating current circuitbreakers, Edition 1.1 (2003) (''IEC 62271–100''), 111.54–1.

(h) *International Maritime Organization (IMO),* Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom:

(1) International Convention for the Safety of Life at Sea (SOLAS), Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1988: Article, Annexes and Certificates. (Incorporating all Amendments in Effect from January 2001) (2001) (''IMO SOLAS 74''), 111.99–5; 111.105–31; 112.15–1; 113.25–6.

(i) *International Society for Measurement and Control (ISA),* 67 Alexander Drive, P.O. Box 12277, Research Triangle Park, NC 27709:

(1) RP 12.6, Wiring Practices for Hazardous (Classified) Locations Instrumentation Part I: Intrinsic Safety, 1995 (''ISA RP 12.6''), 111.105–11; and

(2) [Reserved]

(j) *Lloyd's Register,* 71 Fenchurch Street, London EC3M 4BS, Type Approval System-Test Specification Number 1 (2002), 113.05–7.

(k) *National Electrical Manufacturers Association (NEMA),* 1300 North 17th Street, Arlington, VA 22209:

(1) NEMA Standards Publication ICS 2–2000, Industrial Control and Systems Controllers, Contactors, and Overload Relays, Rated 600 Volts (2000) (''NEMA ICS 2''), 111.70–3;

(2) NEMA Standards Publication ICS 2.3–1995, Instructions for the Handling, Installation, Operation, and Maintenance of Motor Control Centers Rated not More Than 600 Volts (1995) (''NEMA ICS 2.3''), 111.70–3;

(3) NEMA Standards Publication No. ICS 2.4–2003, NEMA and IEC Devices for Motor Service—a Guide for Understanding the Differences (2003) (''NEMA ICS 2.4''), 111.70–3;

(4) NEMA Standards Publication No. ANSI/NEMA 250–1997, Enclosures for Electrical Equipment (1000 Volts Maximum) (Aug. 30, 2001) (''NEMA 250''), 110.15–1; 111.01–9; 110.15–1; 113.10–7; 113.20–3; 113.25–11; 113.30–25; 113.37–10; 113.40–10; 113.50–5;

(5) NEMA Standards Publication No. WC–3–1992, Rubber Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy, Revision 1, February 1994 (''NEMA WC–3''), 111.60–13; and

(6) NEMA WC–70/ICEA S–95–658–1999 Standard for Non-Shielded Power Rated Cable 2000V or Less for the Distribution of Electrical Energy (1999) (''NEMA WC–70''), 111.60–13.

(l) *National Fire Protection Association (NFPA),* 1 Batterymarch Park, Quincy, MA 02169:

(1) NEC 2002 (NFPA 70), National Electrical Code Handbook, Ninth Edition (2002) (''NFPA NEC 2002''), 111.05–33; 111.20–15; 111.25–5; 111.50–3; 111.50–7; 111.50–9; 111.53–1; 111.54–1; 111.55–1; 111.59–1; 111.60–7; 111.60–13; 111.60–23; 111.81–1; 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–9; 111.105–15; 111.105–17; 111.107–1;

(2) NFPA 77, Recommended Practice on Static Electricity (2000) (''NFPA 77''), 111.105–27;

(3) NFPA 99, Standard for Health Care Facilities (2005) (''NFPA 99''), 111.105–37; and

(4) NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment (2003) (''NFPA 496''), 111.105–7.

(m) *Naval Publications and Forms Center (NPFC),* Department of Defense, Single Stock Point, 700 Robins Avenue, Philadelphia, PA 19111:

(1) MIL–C–24640A, Military Specification Cables, Light Weight, Electric, Low Smoke, for Shipboard Use, General Specification for (1995) Supplement 1 (June 26, 1995) (''NPFC MIL–C–24640A''), 111.60–1; 111.60–3;

(2) MIL–C–24643A, Military Specification Cables and Cords, Electric, Low Smoke, for Shipboard Use, General Specification for (1996) Amendment 2 (Mar. 13, 1996) (''NPFC MIL–C–24643A''), 111.60–1; 111.60–3; and

(3) MIL–W–76D, Military Specification Wire and Cable, Hook-Up, Electrical, Insulated, General Specification for (2003) (Revision of MIL–W–76D–1992) Amendment 1–2003 (Feb. 6, 2003) (''NPFC MIL–W–76D''), 111.60–11.

(n) *Naval Sea Systems Command (NAVSEA),* Code 55Z, Department of the Navy, Washington, DC 20362:

(1) DDS 300–2, A.C. Fault Current Calculations, 1988 (''NAVSEA DDS 300–2''), 111.52–5; and

(2) MIL–HDBK–299(SH), Military Handbook Cable Comparison Handbook Data Pertaining to Electric Shipboard Cable Notice 1–1991 (Revision of MIL–HDBK–299(SH) (1989)) (Oct. 15, 1991) (''NAVSEA MIL–HDBK–299(SH)''), 111.60–3; and

(3) [Reserved]

(o) *Underwriters Laboratories Inc. (UL),* 12 Laboratory Drive, Research Triangle Park, NC 27709–3995:

(1) UL 44, Standard for Thermoset-Insulated Wire and Cable, Fifteenth Edition, Mar. 22, 1999 (Revisions through and including May 13, 2002) (''UL 44''), 111.60–11;

(2) UL 50, Standard for Safety Enclosures for Electrical Equipment, Eleventh Edition (Oct. 19, 1995) (''UL 50''), 111.81–1;

(3) UL 62, Standard for Flexible Cord and Fixture Wire, Sixteenth Edition (Oct. 15, 1997) (''UL 62''), 111.60–13;

(4) UL 83, Standard for Thermoplastic-Insulated Wires and Cables, Twelfth Edition (Sep. 29, 1998) (''UL 83''), 111.60–11;

(5) UL 484, Standard for Room Air Conditioners, Seventh Edition, Apr. 27, 1993 (Revisions through and including Sep. 3, 2002) (''UL 484''), 111.87–3;

(6) UL 489, Molded-Case Circuit Breakers, Molded-Case Switches, and Circuit-Breaker Enclosures, Ninth Edition, Oct. 31, 1996 (Revisions through and including Mar. 22, 2000) (''UL 489''), 111.01–15; 111.54–1;

(7) UL 514A, Metallic Outlet Boxes, Ninth Edition (Dec. 27, 1996) (''UL 514A''), 111.81–1;

(8) UL 514B, Conduit, Tubing, and Cable Fittings, Fourth Edition (Nov. 3, 1997) (''UL 514B''), 111.81–1;

(9) UL 514C, Standard for Nonmetallic Outlet Boxes, Flush-Device Boxes, and Covers, Second Edition (Oct. 31, 1988) (''UL 514C''), 111.81–1;

(10) UL 913, Standard for Intrinsically Safe Apparatus and Associated Apparatus for Use in Class i, ii, and iii, Division 1, Hazardous (Classified) Locations, Sixth Edition, Aug. 8, 2002 (Revisions through and including Dec. 15, 2003) (''UL 913''), 111.105–11;

(11) UL 1042, Standard for Electric Baseboard Heating Equipment (Apr. 11, 1994) (''UL 1042''), 111.87–3;

(12) UL 1072, Standard for Medium-Voltage Power Cables, Third Edition, Dec. 28, 2001 (Revisions through and including Apr. 14, 2003) (''UL 1072''), 111.60–1;

(13) UL 1104, Standard for Marine Navigation Lights, 1998 (''UL 1104''), 111.75–17;

(14) UL 1203, Standard for Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations, Third Edition, Sep. 7, 2000 (Revisions through and including Apr. 30, 2004) (''UL 1203''), 111.105–9;

(15) UL 1309, Marine Shipboard Cables, First Edition (July 14, 1995) (''UL 1309''), 111.60–1; 111.60–3;

(16) UL 1581 (May 6, 2003) (''UL 1581''), 111.30–19; 111.60–2; 111.60–6;

(17) UL 1598, Luminaires, First Edition (Jan. 31, 2000) (''UL 1598''): 111.75–20; and

(18) UL 1598A, Standard for Supplemental Requirements for Luminaires for Installation on Marine Vessels, First Edition (Dec. 4, 2000) (''UL 1598A''), 111.75–20.

■ 210. In § 110.15–1, revise paragraph (a) and, in paragraph (b), the definitions of ''Corrosion resistant material or finish'', ''Dripproof'', ''Nonsparking fan'', and ''Watertight'' to read as set out below:

§ 110.15–1 Definitions.

* * * * *

(a) The electrical and electronic terms are defined in IEEE 100 or IEC 60092–101 (both incorporated by reference; see 46 CFR 110.10–1).

(b) * * *

Corrosion resistant material or finish means any material or finish that meets the testing requirements of ASTM B 117 (incorporated by reference; see 46 CFR 110.10–1) or test Kb in IEC 68–2–52 (incorporated by reference, see 46 CFR 110.10–1) for 200 hours and does not show pitting, cracking, or other deterioration more severe than that resulting from a similar test on passivated AISI Type 304 stainless steel.

* * * * *

Dripproof means enclosed so that equipment meets at least a NEMA 250 (incorporated by reference; see 46 CFR 110.10–1) Type 1 with dripshield, Type 2, or Type 12; or IEC 60529 (incorporated by reference; see 46 CFR 110.10–1) IP 22 rating.

* * * * *

Nonsparking fan means nonsparking fan as defined in ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), section 4–8–3/11.

* * * * *

Watertight means enclosed so that equipment meets at least a NEMA 250 Type 4 or 4X or an IEC 60529 IP 56 rating.

* * * * *

PART 111—GENERAL PROVISIONS

■ 211. The authority citation for part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 212. Revise § 111.01–9 to read as follows:

§ 111.01–9 Degrees of protection.

(a) Interior electrical equipment exposed to dripping liquids or falling solid particles must be manufactured to at least NEMA 250 or IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) IP 22 degree of protection as appropriate for the service intended.

(b) Electrical equipment in locations requiring exceptional degrees of protection as defined in 46 CFR 110.15–1 must be enclosed to meet at least the minimum degrees of protection in ABS

Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), section 4–8–3, Table 2, or appropriate NEMA 250 type for the service intended. Each enclosure must be designed so that the total rated temperature of the equipment inside the enclosure is not exceeded.

(c) Central control consoles and similar control enclosures must be manufactured to at least NEMA 250 Type 2 or IEC 60529 IP 22 degree of protection regardless of location.

(d) Equipment for interior locations not requiring exceptional degrees of protection must be manufactured to at least NEMA 250 Type 1 with dripshield or IEC 60529 IP 11 as specified in IEC 60529.

■ 213. Revise § 111.01–15(c) to read as follows:

§ 111.01–15 Temperature ratings.

* * * * *

(c) A 45 °C (113 °F) ambient temperature is assumed for cable and all other non-rotating electrical equipment in boiler rooms, in engine rooms, in auxiliary machinery rooms, and on weather decks. For installations using UL 489 (incorporated by reference; see 46 CFR 110.10–1) SA marine type circuit breakers, the ambient temperature for that component is assumed to be 40 °C (104 °F). For installations using Navy type circuit breakers, the ambient temperature for that component is assumed to be 50 °C (122 °F).

* * * * *

■ 214. Revise § 111.05–7 to read as follows:

§ 111.05–7 Armored and metallic sheathed cable.

When installed, the metallic armor or sheath must meet the installation requirements of Section 25 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

■ 215. Revise § 111.05–9 to read as follows:

§ 111.05–9 Masts.

Each nonmetallic mast and topmast must have a lightning-ground conductor in accordance with section 10 of IEC 92–401 (incorporated by reference; see 46 CFR 110.10–1).

■ 216. Revise § 111.05–33 to read as follows:

§ 111.05–33 Equipment safety grounding (bonding) conductors.

(a) Each equipment-grounding conductor must be sized in accordance with Section 250.122 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1).

(b) Each equipment-grounding conductor (other than a system-grounding conductor) of a cable must be permanently identified as a grounding conductor in accordance with the requirements of Section 250.119 of NFPA NEC 2002.

■ 217. Revise § 111.12–1(a) to read as follows:

§ 111.12–1 Prime movers.

(a) Prime movers must meet section 58.01–5 and 46 CFR subpart 58.10 except that those for mobile offshore drilling units must meet Part 4, Chapter 3, sections 4/3.17 and 4/3.19 of the ABS MODU Rules (incorporated by reference; see 46 CFR 110.10–1). Further requirements for emergency generator prime movers are in 46 CFR subpart 112.50.

* * * * *

■ 218. Revise § 111.12–3 to read as follows:

§ 111.12–3 Excitation.

In general, excitation must meet sections 4–8–3/13.2(a), 4–8–5/5.5.1, 4–8–5/5.5.2, and 4–8–5/5.17.6 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), except that those for mobile offshore drilling units must meet Part 4, Chapter 3, sections 4/3.21.1 and 4/3.23.1 of the ABS MODU Rules (incorporated by reference; see 46 CFR 110.10–1). In particular, no static exciter may be used for excitation of an emergency generator unless it is provided with a permanent magnet or a residual-magnetism-type exciter that has the capability of voltage build-up after two months of no operation.

■ 219. Revise § 111.12–5 to read as follows:

§ 111.12–5 Construction and testing of generators.

Each generator must meet the applicable requirements for construction and testing in section 4–8–3 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1) except that each one for a mobile offshore drilling unit must meet the requirements in part 4, chapter 3, section 4 of the ABS MODU Rules (incorporated by reference; see 46 CFR 110.10–1).

■ 220. Revise § 111.12–7 to read as follows:

§ 111.12–7 Voltage regulation and parallel operation.

Voltage regulation and parallel operation must meet:

(a) For AC systems: sections 4–2–3/7.5.2, 4–2–4/7.5.2, 4–8–3/3.13.2, and 4–8–3/3.13.3 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1);

(b) For DC systems: section 4–8–3/3.13.3(c) of the ABS Steel Vessel Rules, and IEC 92–202 and IEC 92–301 (both incorporated by reference; see 46 CFR 110.10–1); and

(c) For mobile offshore drilling units: Part 4, Chapter 3, section 4/3.21.2, 4/3.21.3, 4/3.23.2, and 4/3.23.3 of the ABS MODU Rules (incorporated by reference; see 46 CFR 110.10–1).

■ 221. Revise § 111.15–2(b) to read as follows:

§ 111.15–2 Battery construction.

* * * * *

(b) Each fully charged lead-acid battery must have a specific gravity that meets section 22 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 222. Revise § 111.20–15 to read as follows:

§ 111.20–15 Protection of transformers against overcurrent.

Each transformer must have protection against overcurrent that meets Article 450 of NFPA NEC 2002 or IEC 92–303 (both incorporated by reference; see 46 CFR 110.10–1).

■ 223. Revise § 111.25–5(a) to read as follows:

§ 111.25–5 Marking.

(a) Each motor must have a marking or nameplate that meets either Section 430.7 of NFPA NEC 2002 or clause 16 of IEC 92–301 (both incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 224. Revise § 111.30–1 to read as follows:

§ 111.30–1 Location and installation.

Each switchboard must meet the location and installation requirements in section 8.2 of IEEE 45–2002 or IEC 60092–302 (both incorporated by reference; see 46 CFR 110.10–1), as applicable.

■ 225. Amend § 111.30–5 by revising paragraphs (a)(1) and (2) to read as follows:

§ 111.30–5 Construction.

(a) * * *

(1) For low voltages, either section 8.3 of IEEE 45–2002 or IEC 60092–302 (both incorporated by reference; see 46 CFR 110.10–1), as appropriate.

(2) For medium voltages, either section 8.4 of IEEE 45–2002 or IEC 92–503 (incorporated by reference; see 46 CFR 110.10–1), as appropriate.

* * * * *

■ 226. Amend § 111.30–19 by revising paragraphs (a)(1), (a)(2) and (b)(4) to read as follows:

§ 111.30–19 Buses and wiring.

(a) * * *

(1) Section 7.10 of IEEE 45–1998 (incorporated by reference; see 46 CFR 110.10–1); or

(2) IEC 60092–302 (clause 7) (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

(b) * * *

(4) Flame-retardant meeting test VW–1 of UL 1581 or IEC 332–1 (both incorporated by reference; see 46 CFR 110.10–1); and

* * * * *

■ 227. Amend § 111.33–3 by revising paragraphs (a)(1) and (2) to read as follows:

§ 111.33–3 Nameplate data.

(a) * * *

(1) Section 10.20.12 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1); or

(2) Clause 8 of IEC 92–304 (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 228. Amend § 111.33–5 by revising paragraphs (a) and (b) to read as follows:

§ 111.33–5 Installations.

* * * * *

(a) Sections 10.20.2, 10.20.7, and 10.20.8 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1); or

(b) IEC 92–304 (incorporated by reference; see 46 CFR 110.10–1).

■ 229. Revise § 111.33–11 to read as follows:

§ 111.33–11 Propulsion systems.

Each power semiconductor rectifier system in a propulsion system must meet sections 4–8–5/5.17.9 and 4–8–5/5.17.10 of ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), except that each one for mobile offshore drilling units must meet the requirements in Part 4, Chapter 3, section 4/3.5.3 of ABS MODU Rules (incorporated by reference; see 46 CFR 110.10–1).

■ 230. Revise § 111.35–1 to read as follows:

§ 111.35–1 Electrical propulsion installations.

Each electric propulsion installation must meet sections 4–8–5/5.5, 4–8–5/5.11, 4–8–5/5.13, 4–8–5/5.17.8(e), 4–8–5/5.17.9, and 4–8–5/5.17.10 of ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), except that each one for mobile offshore drilling units must meet the requirements in part 4, chapter 3, section 4/3.5.3 of ABS MODU Rules (incorporated by reference; see 46 CFR 110.10–1).

■ 231. Revise § 111.40–1 to read as follows:

§ 111.40–1 Panelboard standard.

Each panelboard must meet section 17.1 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

■ 232. Amend § 111.50–3 by revising paragraphs (c), (e), and (g)(2) to read as follows:

§ 111.50–3 Protection of conductors.

* * * * *

(c) *Fuses and circuitbreakers.* If the allowable current-carrying capacity of the conductor does not correspond to a standard rating for fuses or circuitbreakers that meets Section 240.6 of NFPA NEC 2002 or IEC 92–202 (both incorporated by reference; see 46 CFR 110.10–1), then the next larger such rating is acceptable, except that:

(1) This rating must not be larger than 150 percent of the current-carrying capacity of the conductor; and

(2) The effect of temperature on the operation of fuses and thermally controlled circuitbreakers must be taken into consideration.

* * * * *

(e) *Thermal devices.* No thermal cutout, thermal relay, or other device not designed to open a short circuit may be used for protection of a conductor against overcurrent due to a short circuit or ground, except in a motor circuit as described in Article 430 of NFPA NEC 2002 or in IEC 92–202.

* * * * *

(g) * * *

(2) For motor-running protection described in Article 430 of NFPA NEC 2002 or in IEC 92–202.

■ 233. Revise § 111.50–7(a) to read as follows:

§ 111.50–7 Enclosures.

(a) Each enclosure of an overcurrent protective device must meet Sections 240–30 and 240–33 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 234. Revise § 111.50–9 to read as follows:

§ 111.50–9 Disconnecting and guarding.

Disconnecting and guarding of overcurrent protective devices must meet Part IV of Article 240 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1).

■ 235. Revise § 111.52–5(b) and (c) to read as follows:

§ 111.52–5 Systems 1,500 kilowatts or above.

* * * * *

(b) Estimated calculations using NAVSEA DDS 300–2 (incorporated by reference, see 46 CFR 110.10–1).

(c) Estimated calculations using IEC 61363–1 (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 236. Revise § 111.53–1(a)(1) to read as follows:

§ 111.53–1 General.

(a) * * *

(1) Meet the general provisions of Article 240 of NFPA NEC 2002 or IEC 92–202 (both incorporated by reference; see 46 CFR 110.10–1) as appropriate.

* * * * *

■ 237. Revise § 111.54–1, paragraphs (a)(1), (b), and (c) to read as follows:

§ 111.54–1 Circuitbreakers.

(a) * * *

(1) Meet the general provision of Article 240 of NFPA NEC 2002 or IEC 92–202 (both incorporated by reference; see 46 CFR 110.10–1) as appropriate;

* * * * *

(b) No molded-case circuitbreaker may be used in any circuit having a nominal voltage of more than 600 volts (1,000 volts for a circuit containing a circuitbreaker manufactured to the standards of the IEC). Each molded-case circuitbreaker must meet section 9 and marine supplement SA of UL 489 (incorporated by reference, see 46 CFR 110.10–1) or part 2 of IEC 60947–2 (incorporated by reference; see § 110.10–1), except as noted in paragraph (e) of this section.

(c) Each circuitbreaker, other than a molded-case one, that is for use in any of the following systems must meet the following requirements:

(1) An alternating-current system having a nominal voltage of 600 volts or less (1,000 volts for such a system with circuitbreakers manufactured to the standards of the IEC) must meet:

(i) IEEE C37.13 (incorporated by reference; see 46 CFR 110.10–1);

(ii) ANSI/IEEE C37.27 (incorporated by reference; see 46 CFR 110.10–1); or

(iii) IEC 60947–2.

(2) A direct-current system of 3,000 volts or less must meet IEEE C37.14 (incorporated by reference; see 46 CFR 110.10–1) or IEC 60947–2.

(3) An alternating-current system having a nominal voltage greater than 600 volts (or greater than 1,000 volts for IEC standard circuitbreakers) must meet:

(i) IEEE C37.04, IEEE C37.010, and ANSI/IEEE C37.12 (all three standards incorporated by reference; see 46 CFR 110.10–1); or

(ii) IEC 62271–100 (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 238. Revise § 111.55–1(a) to read as follows:

§ 111.55–1 General.

(a) Each switch must meet Article 404 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1).

* * * * *

■ 239. Revise § 111.59–1 to read as follows:

§ 111.59–1 General.

Each busway must meet Article 368 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1).

■ 240. Revise § 111.60–1 to read as follows:

§ 111.60–1 Construction and testing of cable.

(a) Each marine shipboard cable must meet all the requirements for construction and identification of either IEEE 1580, UL 1309, IEC 92–353, or NPFC MIL–C–24640A or NPFC MIL–C–24643A (all five standards incorporated by reference; see 46 CFR 110.10–1), including the respective flammability tests contained therein, and must be of a copper-stranded type.

(b) Each cable constructed to IEC 92–353 must meet the flammability requirements of Category A of IEC 60332–3–22 (incorporated by reference; see 46 CFR 110.10–1).

(c) Medium-voltage electric cable must meet the requirements of IEEE 1580 and UL 1072 (incorporated by reference; see 46 CFR 110.10–1), where applicable, for cables rated above 5,000 volts.

(d) Electrical cable that has a polyvinyl-chloride insulation with a nylon jacket (Type T/N) must meet either UL 1309, IEEE 1580, or section 8 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

(e) Electrical cable regardless of construction must meet, at a minimum, all of the performance and marking requirements of section 5.13 of IEEE 1580.

■ 241. Revise § 111.60–2 introductory text to read as follows:

§ 111.60–2 Specialty cable for communication and RF applications.

Specialty cable such as certain coaxial cable that cannot pass the flammability test contained in IEEE 1580, test VW–1 of UL 1581, or Category A of IEC 60332–3–22 (all three standards incorporated by reference; see 46 CFR 110.10–1) because of unique properties of construction, must:

* * * * *

■ 242. Revise § 111.60–3 to read as follows:

§ 111.60–3 Cable application.

(a)(1) Cable constructed according to IEEE 1580 must meet the provisions for cable application of section 24 of IEEE 45–2002 (both incorporated by reference; see 46 CFR 110.10–1).

(2) Cable constructed according to IEC 92–353 or UL 1309 (both incorporated by reference; see 46 CFR 110.10–1) must meet section 24 of IEEE 45–2002, except 24.6.1, 24.6.7, and 24.8.

(3) Cable constructed according to IEC 92–353 must be applied in accordance with IEC 60092–352 (incorporated by reference; see 46 CFR 110.10–1), Table 1, for ampacity values.

(b)(1) Cable constructed according to IEEE 1580 must be applied in accordance with Table 25, Note 6, of IEEE 45–2002.

(2) Cable constructed according to IEC 92–353 must be derated according to IEC 60092–352, clause 8.

(3) Cable constructed according to NPFC MIL–C–24640A or NPFC MIL–C–24643A must be derated according to NAVSEA MIL–HDBK–299 (SH) (all three standards incorporated by reference; see 46 CFR 110.10–1).

(c) Cable for special applications defined in section 24 of IEEE 45–2002 must meet the provisions of that section.

■ 243. In § 111.60–5, paragraphs (a)(1), (a)(2), (b), and (c) are revised to read as follows:

§ 111.60–5 Cable installation.

(a) * * *

(1) Sections 25, except 25.11, of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1); or

(2) Cables manufactured to IEC 92–353 must be installed in accordance with IEC 60092–352 (both incorporated by reference; see 46 CFR 110.10–1), including clause 8.

(b) Each cable installation made in accordance with clause 8 of IEC 60092–352 must utilize the conductor ampacity values of Table I of IEC 60092–352.

(c) No cable may be located in any tank unless—

(1) The purpose of the cable is to supply equipment or instruments especially designed for and compatible with service in the tank and whose function requires the installation of the cable in the tank;

(2) The cable is either compatible with the liquid or gas in the tank or protected by an enclosure; and

(3) Neither braided cable armor nor cable metallic sheath is used as the grounding conductor.

* * * * *

■ 244. Revise § 111.60–6(a) to read as follows:

§ 111.60–6 Fiber optic cable.

* * * * *

(a) Be constructed to pass the flammability test contained in IEEE 1202, test VW–1 of UL 1581, or Category A of IEC 60332–3–22 (all three standards incorporated by reference; see 46 CFR 110.10–1); or

* * * * *

§ 111.60–7 [Amended]

■ 245. In Table 111.60–7, remove the words ''National Electrical Code'' and add, in their place, the words ''NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1)''.

■ 246. Revise § 111.60–11(c) to read as follows:

§ 111.60–11 Wire.

* * * * *

(c) Wire, other than in switchboards, must meet the requirements in sections 24.6.7 and 24.8 of IEEE 45–2002, NPFC MIL–W–76D, UL 44, UL 83 (all four standards incorporated by reference; see 46 CFR 110.10–1), or equivalent standard.

* * * * *

■ 247. Revise § 111.60–13, paragraphs (a), (b), and (c), to read as follows:

§ 111.60–13 Flexible electric cord and cables.

(a) *Construction and testing.* Each flexible cord and cable must meet the requirements in section 24.6.1 of IEEE 45–2002, Article 400 of NFPA NEC 2002, NEMA WC–3, NEMA WC–70, or UL 62 (all five standards incorporated by reference; see 46 CFR 110.10–1).

(b) *Application.* No flexible cord may be used except:

(1) As allowed under Sections 400–7 and 400–8 of NFPA NEC 2002; and

(2) In accordance with Table 400–4 in NFPA NEC 2002.

(c) *Allowable current-carrying capacity.* No flexible cord may carry more current than allowed under Table 400–5 in NFPA NEC 2002, NEMA WC–3, or NEMA WC–70.

* * * * *

■ 248. Revise § 111.60–19(b) to read as follows:

§ 111.60–19 Cable splices.

* * * * *

(b) Each cable splice must be made in accordance with section 25.11 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

■ 249. Revise § 111.60–21 to read as follows:

§ 111.60–21 Cable insulation tests.

All cable for electric power and lighting and associated equipment must be checked for proper insulation resistance to ground and between conductors. The insulation resistance must not be less than that in section 34.2.1 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

■ 250. Revise § 111.60–23(b), (d), and (f) to read as follows:

§ 111.60–23 Metal-clad (Type MC) cable.

* * * * *

(b) The cable must have a corrugated gas-tight, vapor-tight, and watertight sheath of aluminum or other suitable metal that is close-fitting around the conductors and fillers and that has an overall jacket of an impervious PVC or thermoset material.

* * * * *

(d) The cable must be installed in accordance with Article 326 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1). The ampacity values found in table 25 of IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1) may not be used.

* * * * *

(f) Equipment grounding conductors in the cable must be sized in accordance with Section 250.122 of NFPA NEC 2002. System grounding conductors must be of a cross-sectional area not less than that of the normal current carrying conductors of the cable. The metal sheath must be grounded but must not be used as a required grounding conductor.

* * * * *

■ 251. Revise § 111.70–1(a) introductory text to read as follows:

§ 111.70–1 General.

(a) Each motor circuit, controller, and protection must meet the requirements of ABS Steel Vessel Rules, sections 4–8–2/9.17, 4–8–3/5.7.3, 4–8–4/9.5, and 4–8–3/5; ABS MODU Rules, Part 4, Chapter 3, sections 4/7.11 and 4/7.17; or IEC 92–301 (all three standards incorporated by reference; see 46 CFR 110.10–1), as appropriate, except for the following circuits:

* * * * *

■ 252. Revise § 111.70–3 section heading and paragraph (a) to read as follows:

§ 111.70–3 Motor controllers and motor-control centers.

(a) *General.* The enclosure for each motor controller or motor-control center must meet either NEMA ICS 2 and NEMA ICS 2.3, or Table 5 of IEC 92–201 (all three standards incorporated by reference; see 46 CFR 110.10–1), as appropriate, for the location where it is installed. In addition, each such enclosure in a hazardous location must meet subpart 111.105 of this part. NEMA ICS 2.4 (incorporated by reference; see 46 CFR 110.10–1) provides guidance on the differences between devices meeting NEMA and those meeting IEC for motor service.

* * * * *

■ 253. Revise § 111.75–5(b) to read as follows:

§ 111.75–5 Lighting branch circuits.

* * * * *

(b) *Connected Load.* The connected loads on a lighting branch circuit must not be more than 80 percent of the rating of the overcurrent protective device, computed on the basis of the fixture ratings and in accordance with IEEE 45–2002 (incorporated by reference; see 46 CFR 110.10–1), section 5.4.2.

* * * * *

■ 254. Revise § 111.75–17(d)(2) to read as follows:

§ 111.75–17 Navigation lights.

* * * * *

(d) * * *

(2) Be certified by an independent laboratory to the requirements of UL 1104 (incorporated by reference; see 46 CFR 110.10–1) or an equivalent standard under 46 CFR 110.20–1. Portable battery powered lights need meet only the requirements of the standard applicable to those lights.

* * * * *

■ 255. Revise § 111.75–20(a) and (e) to read as follows:

§ 111.75–20 Lighting fixtures.

(a) The construction of each lighting fixture for a non-hazardous location must meet UL 1598A or IEC 92–306 (both incorporated by reference; see 46 CFR 110.10–1).

* * * * *

(e) Nonemergency and decorative interior-lighting fixtures in environmentally protected, nonhazardous locations need meet only the applicable UL type-fixture standards in UL 1598 (incorporated by reference; see 46 CFR 110.10–1) and UL 1598A marine supplement or the standards in IEC 92–306. These fixtures must have vibration clamps on fluorescent tubes longer than 102 cm (40 inches), secure mounting of glassware, and rigid mounting.

■ 256. Revise § 111.81–1(d) to read as follows:

§ 111.81–1 Outlet boxes and junction boxes; general.

* * * * *

(d) As appropriate, each outlet-box or junction-box installation must meet the following standards, all of which are incorporated by reference (see 46 CFR 110.10–1): Article 314 of NFPA NEC 2002; UL 50; UL 514A, UL 514B, and UL 514C; IEC 60092–101; IEC 92–201; IEC 92–306; IEC 60092–352; IEC 92–401; and IEC 60092–502.

* * * * *

■ 257. Revise § 111.87–3(a) to read as follows:

§ 111.87–3 General requirements.

(a) Each electric heater must meet applicable UL 484 or UL 1042 construction standards (both incorporated by reference; see 46 CFR 110.10–1) or equivalent standards under § 110.20–1 of this chapter.

* * * * *

■ 258. Revise § 111.91–1 to read as follows:

§ 111.91–1 Power, control, and interlock circuits.

Each electric power, control, and interlock circuit of an elevator or dumbwaiter must meet ASME A17.1 (incorporated by reference; see 46 CFR 110.10–1).

■ 259. Revise § 111.95–5 to read as follows:

§ 111.99–5 General.

Fire door release systems, if installed, must meet regulation II–2/30.4.3 of IMO SOLAS 74 (incorporated by reference; see 46 CFR 110.10–1).

■ 260. Revise § 111.101–1 to read as follows:

§ 111.101–1 Applicability.

This subpart applies to each submersible motor-driven bilge pump required on certain vessels under 46 CFR 56.50–55.

■ 261. Revise § 111.105–1 to read as follows:

§ 111.105–1 Applicability; definition.

This subpart applies to installations in hazardous locations as defined in NFPA NEC 2002 and in IEC 60079–0 (both incorporated by reference; see 46 CFR 110.10–1). As used in this subpart, ''IEC 60079 series'' means IEC 60079–0, IEC 60079–1, IEC 60079–2, IEC 60079–5, IEC 79–6, IEC 60079–7, IEC 60079–11, IEC 60079–15, and IEC 79–18 (all incorporated by reference; see 46 CFR 110.10–1).

■ 262. Revise § 111.105–3 to read as follows:

§ 111.105–3 General requirements.

All electrical installations in hazardous locations must comply with the general requirements of section 33 of IEEE 45–1998 (incorporated by reference; see 46 CFR 110.10–1), and with either Articles 500 through 505 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1) or with the IEC 60079 series (as defined in 46 CFR 111.105–1 and incorporated by reference; see 46 CFR 110.10–1). When installations are made in accordance with NFPA NEC 2002 articles, and when installed fittings are approved for the specific hazardous location and the cable type, marine shipboard cable that complies with 46 CFR subpart 111.60 may be used instead of rigid metal conduit.

■ 263. Revise § 111.105–5 to read as follows:

§ 111.105–5 System integrity.

In order to maintain system integrity, each individual electrical installation in a hazardous location must comply specifically with Articles 500–505 of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1), as modified by 46 CFR 111.105–3, or with the IEC 60079 series (as defined in 46 CFR 111.105–1 and incorporated by reference; see 46 CFR 110.10–1), but not in combination in a manner that will compromise system integrity or safety. Hazardous location equipment must be approved as suitable for use in the specific hazardous atmosphere in which it is installed. The use of nonapproved equipment is prohibited.

■ 264. Revise § 111.105–7 introductory text and paragraph (b) to read as follows:

§ 111.105–7 Approved equipment.

When this subpart or NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1) states that an item of electrical equipment must be approved, or when IEC 60079–0 (incorporated by reference; see 46 CFR 110.10–1) states that an item of electrical equipment must be tested or approved in order to comply with the IEC 60079 series (as defined in § 111.105–1 and incorporated by reference; see 46 CFR 110.10–1), that item must be—

* * * * *

(b) Purged and pressurized equipment that meets NFPA 496 (incorporated by reference; see 46 CFR 110.10–1) or IEC 60079–2.

■ 265. Revise § 111.105–9 to read as follows:

§ 111.105–9 Explosion-proof and flameproof equipment.

Each item of electrical equipment required by this subpart to be explosion-proof under the classification system of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1) must be approved as meeting UL 1203 (incorporated by reference; see 46 CFR 110.10–1). Each item of electrical equipment required by this subpart to be flameproof must be approved as meeting IEC 60079–1 (incorporated by reference; see 46 CFR 110.10–1).

■ 266. Revise § 111.105–11(a) and (d) to read as follows:

§ 111.105–11 Intrinsically safe systems.

(a) Each system required by this subpart to be intrinsically safe must use approved components meeting UL 913 or IEC 60079–11 (both incorporated by reference; see 46 CFR 110.10–1).

* * * * *

(d) Each intrinsically safe system must meet ISA RP 12.6 (incorporated by reference, see 46 CFR 110.10–1), except Appendix A.1.

■ 267. Revise § 111.105–15 to read as follows:

§ 111.105–15 Additional methods of protection.

Each item of electrical equipment that is—

(a) A powder-filled apparatus must meet IEC 60079–5 (incorporated by reference; see 46 CFR 110.10–1);

(b) An oil-immersed apparatus must meet either IEC 79–6 (incorporated by reference; see 46 CFR 110.10–1) or Article 500.7(I) of NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1);

(c) Type of protection ''e'' must meet IEC 60079–7 (incorporated by reference; see 46 CFR 110.10–1);

(d) Type of protection ''n'' must meet IEC 60079–15 (incorporated by reference; see 46 CFR 110.10–1); and

(e) Type of protection ''m'' must meet IEC 79–18 (incorporated by reference; see 46 CFR 110.10–1).

■ 268. Revise § 111.105–17(b) to read as follows:

§ 111.105–17 Wiring methods for hazardous locations.

* * * * *

(b) Where conduit is installed, the applicable requirements of either NFPA NEC 2002 (incorporated by reference; see 46 CFR 110.10–1) or the IEC 60079 series (as defined in § 111.105–1 and incorporated by reference; see 46 CFR 110.10–1) must be followed.

* * * * *

■ 269. Revise § 111.105–27(b) to read as follows:

§ 111.105–27 Belt drives.

* * * * *

(b) Pulleys, shafts, and driving equipment grounded to meet NFPA 77 (incorporated by reference, see 46 CFR 110.10–1).

■ 270. Revise § 111.105–31 section heading and paragraphs (e) and (n) to read as follows:

§ 111.105–31 Flammable or combustible cargo with a flashpoint below 60 °C (140 °F), carriers of liquid-sulphur or inorganic acid.

* * * * *

(e) *Cargo Tanks.* A cargo tank is a Class I, Division 1 (IEC Zone 0) location that has additional electrical equipment restrictions outlined in section 33 of IEEE 45–1998 and IEC 60092–502 (both incorporated by reference; see 46 CFR 110.10–1). Cargo tanks must not contain any electrical equipment except the following:

(1) Intrinsically safe equipment; and

(2) Submerged cargo pump motors and their associated cable.

* * * * *

(n) *Duct keel ventilation or lighting.* (1) The lighting and ventilation system for each pipe tunnel must meet ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), section 5–1–7/31.17.

(2) If a fixed gas detection system is installed, it must meet the requirements of IMO SOLAS 74 (incorporated by reference; see 46 CFR 110.10–1) and Part 4, Chapter 3 of ABS Steel Vessel Rules.

■ 271. Revise § 111.105–37 to read as follows:

§ 111.105–37 Flammable anesthetics.

Each electric installation where a flammable anesthetic is used or stored must meet NFPA 99 (incorporated by reference, see 46 CFR 110.10–1).

■ 272. Revise § 111.105–39 introductory text and paragraph (a) to read as follows:

§ 111.105–39 Additional requirements for vessels carrying vehicles with fuel in their tanks.

Each vessel that carries a vehicle with fuel in its tank must meet the requirements of ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), section 5–10–4/3, except as follows:

(a) If the ventilation requirements of ABS Steel Vessel Rules section 5–10–4/3 are not met, all installed electrical equipment must be suitable for a Class I, Division 1; Zone 0; or Zone 1 hazardous location.

* * * * *

■ 273. Revise § 111.105–40(a) and the introductory text in paragraph (c) to read as follows:

§ 111.105–40 Additional requirements for RO/RO vessels.

(a) Each RO/RO vessel must meet ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1), section 4–8–4/27.3.2.

* * * * *

(c) Where the ventilation requirement of ABS Steel Vessel Rules section 4–8–4/27.3.2 is not met—

* * * * *

■ 274. Revise § 111.105–41 to read as follows:

§ 111.105–41 Battery rooms.

Each electrical installation in a battery room must meet 46 CFR subpart 111.15 and IEEE 45–1998 (incorporated by reference; see 46 CFR 110.10–1).

■ 275. Revise § 111.107–1, paragraph (b) introductory text and paragraph (c)(1) to read as follows:

§ 111.107–1 Industrial systems.

* * * * *

(b) An industrial system that meets the applicable requirements of NFPA NEC 2002 (incorporated by reference, see 46 CFR 110.10–1) must meet only the following:

* * * * *

(c) * * *

(1) Be installed in accordance with 46 CFR 111.60–5 and meet the flammability-test requirements of either IEEE 1202 or Category A of IEC 60332–3–22 (both incorporated by reference; see 46 CFR 110.10–1); or

* * * * *

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

■ 276. The authority citation for part 112 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 277. Revise § 112.15–1(r) to read as follows:

§ 112.15–1 Temporary emergency loads.

* * * * *

(r) Each general emergency alarm system required by IMO SOLAS 74 (incorporated by reference; see 46 CFR 110.10–1).

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

■ 278. The authority citation for part 113 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 279. Revise § 113.05–7(a) and (b) to read as follows:

§ 113.05–7 Environmental tests.

* * * * *

(a) Section 4–9–7, Table 9, of ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 110.10–1) or the applicable ENV category of Lloyd's Register Type Approval System—Test Specification Number 1 (incorporated by reference; see 46 CFR 110.10–1); and

(b) IEC 60533 (incorporated by reference; see 46 CFR 110.10–1) as appropriate.

■ 280. Revise § 113.10–7 to read as follows:

§ 113.10–7 Connection boxes.

Each connection box must be constructed in accordance with Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) requirements.

■ 281. Revise § 113.20–3 to read as follows:

§ 113.20–3 Connection boxes.

Each connection box and each switch enclosure in an automatic sprinkler system must be constructed in accordance with Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) requirements.

■ 282. Revise § 113.25–6 to read as follows:

§ 113.25–6 Power supply.

The emergency power source for the general emergency alarm system must meet the requirements of IMO SOLAS 74 (incorporated by reference; see 46 CFR 110.10–1), Regulation II–1/42 or II–1/43, as applicable.

■ 283. Revise § 113.25–11(a) to read as follows:

§ 113.25–11 Contact makers.

* * * * *

(a) Have normally open contacts and be constructed in accordance with Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) requirements;

* * * * *

■ 284. Amend § 113.25–12 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 113.25–12 Alarm signals.

* * * * *

(c)(1) The minimum sound-pressure levels for the emergency-alarm tone in interior and exterior spaces must be a sound level of not less than 80 dB(A) measured at 10 feet on the axis; and

(2) At least 10 dB(A) measured at 10 feet on the axis, above the background noise level when the vessel is underway in moderate weather unless flashing red lights are used in accordance with 46 CFR 113.25–10(b).

(d) Alarm signals intended for use in sleeping compartments may have a minimum sound level of 75 dB(A) measured 3 feet (1 meter) on axis, and at least 10 dB(A) measured 3 feet (1 meter) on axis, above ambient noise levels with the ship under way in moderate weather.

■ 285. Revise § 113.30–3(b) to read as follows:

§ 113.30–3 Means of communications.

* * * * *

(b) The means of communication and calling must be a reliable means of voice communication and must be independent of the vessel's electrical system.

■ 286. Revise § 113.30–20(c) to read as follows:

§ 113.30–20 General requirements.

* * * * *

(c) No jack-box or headset may be on a communication system that includes any station required by this subpart, except for a station installed to meet 46 CFR 113.30–5(h) or 46 CFR 113.30–25(f).

■ 287. Revise § 113.30–25 to read as follows:

§ 113.30–25 Detailed requirements.

(a) Multiple stations must be able to communicate at the same time.

(b) The loss of one component of the system must not disable the rest of the system.

(c) The system must be able to operate under full load for the same period of operation as required for the emergency generator. See 46 CFR 112.05–5, Table 112.05–5(a).

(d) Each voice-communication station device in the weather must be in a proper enclosure as required in 46 CFR 111.01–9. The audible-signal device must be outside the station enclosure.

(e) Each station in a navigating bridge or a machinery space must be in an enclosure meeting at least Type 2 of NEMA 250 or IP 22 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1).

(f) In a noisy location, such as an engine room, there must be a booth or other equipment to permit reliable voice communication while the vessel is operating.

(g) In a space throughout which the voice communication station audible-signal device cannot be heard, there must be another audible-signal device or a visual-device, such as a light, either of which is energized from the final emergency bus.

(h) If two or more voice communication stations are near each other, there must be a means that indicates the station called.

(i) Each connection box must meet at least Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529.

(j) Voice communication cables must run as close to the fore-and-aft centerline of the vessel as practicable.

(l) No cable for voice communication may run through any space at high risk of fire such as machinery rooms and galleys, unless it is technically impracticable to route it otherwise or it must serve circuits within those spaces.

(2) Each cable running through any space at high risk of fire must meet IEC 60331–11 and IEC 60331–21 (both incorporated by reference; see 46 CFR 110.10–1).

(k) If the communications system uses a sound-powered telephone, the following requirements also apply:

(1) Each station except one regulated by paragraph (d) of this section must include a permanently wired handset with a push-to-talk button and a hanger for the handset.

(2) The hanger must be constructed so that it holds the handset away from the bulkhead and so that the motion of the vessel will not dislodge the handset.

(3) Each talking circuit must be electrically independent of each calling circuit.

(4) No short circuit, open circuit, or ground on either side of a calling circuit may affect a talking circuit.

(5) Each circuit must be insulated from ground.

■ 288. Revise § 113.37–10(b) to read as follows:

§ 113.37–10 Detailed requirements.

* * * * *

(b) Each electric component or its enclosure must meet Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) requirements.

■ 289. Revise § 113.40–10(b) to read as follows:

§ 113.40–10 Detailed requirements.

* * * * *

(b) Each electric component or its enclosure must meet Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) requirements.

■ 290. Revise § 113.50–5(g) to read as follows:

§ 113.50–5 General requirements.

* * * * *

(g) Each electrical subsystem in a weather location must be watertight or in a watertight enclosure and must meet Type 4 or 4X of NEMA 250 or IP 56 of IEC 60529 (both incorporated by reference; see 46 CFR 110.10–1) requirements.

■ 291. Revise § 113.65–5 to read as follows:

§ 113.65–5 General requirements.

Each whistle operator must meet section 21.5 of IEEE Std 45–2002 (incorporated by reference; see 46 CFR 110.10–1).

PART 162—ENGINEERING EQUIPMENT

■ 292. Revise the authority citation for part 162 to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 293. Revise § 162.017–1 to read as follows:

§ 162.017–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *International Organization for Standardization (ISO)*, Case postal 56, CH–1211 Geneva 20, Switzerland:

(1) ISO 15364, Ships and Marine Technology—Pressure/Vacuum Valves for Cargo Tanks, First Edition (Sep. 1, 2000) (''ISO 15364''), 162.017–3; and

(2) [Reserved]

■ 294. Amend § 162.017–3 by adding paragraph (r) to read as follows:

§ 162.017–3 Materials, construction, and workmanship.

* * * * *

(r) Pressure-vacuum relief valves constructed in accordance with ISO 15364 (incorporated by reference; see 46 CFR 162.017–1) meet the requirements of this subpart.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

■ 295. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 296. Revise § 170.015 to read as follows:

§ 170.015 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) *ASTM International (formerly American Society for Testing and Materials) (ASTM)*, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:

(1) ASTM F 1196–00, Standard Specification for Sliding Watertight Door Assemblies (2000) (''ASTM F 1196''), 170.270; and

(2) ASTM F 1197–00, Standard Specification for Sliding Watertight Door Control Systems (2000) (''ASTM F 1197''), 170.270.

(c) *Naval Publications and Forms Center (NPFC)*, Department of Defense, Single Stock Point, 700 Robins Avenue, Philadelphia, PA 19111:

(1) MIL–P–21929B, Plastic Material, Cellular Polyurethane, Foam in Place, Rigid, 1970 (''NPFC MIL–P–21929B''), 170.245; and

(2) [Reserved]

(d) *International Maritime Organization (IMO),* Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom:

(1) Resolution A.265 (VIII), Recommendation on a standard method for establishing compliance with the requirements for cross-flooding arrangements in passenger ships (''IMO Resolution A.265 (VIII)''), 170.135; and

(2) [Reserved]

■ 297. Revise § 170.135(a) to read as follows:

§ 170.135 Operating information for a vessel with Type III subdivision.

(a) In addition to the information required in 46 CFR 170.110, the stability booklet of a passenger vessel with Type III subdivision must contain the information required by Regulation 8(b) of IMO Resolution A.265 (VIII) (incorporated by reference; see 46 CFR 170.015).

* * * * *

■ 298. Revise § 170.245(b)(2) to read as follows:

§ 170.245 Foam flotation material.

* * * * *

(b) * * *

(2) The foam must comply with NPFC MIL–P–21929B (incorporated by reference; see 46 CFR 170.015), including the requirements for fire resistance.

* * * * *

PART 175—GENERAL PROVISIONS

■ 299. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3307, 3703; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

■ 300. Amend § 175.400 by revising the introductory text and paragraph (10) of the definition of ''corrosion-resistant material or corrosion-resistant'' and the definition of ''flash point'' to read as follows:

§ 175.400 Definitions of terms used in this subchapter.

The following terms are used in this subchapter:

* * * * *

Corrosion-resistant material or *corrosion-resistant* means made of one of the following materials in a grade suitable for its intended use in a marine environment: * * *

(10) A material, which when tested in accordance with ASTM B 117 (incorporated by reference, see 46 CFR 175.600) for 200 hours, does not show pitting, cracking, or other deterioration.

* * * * *

Flash point means the temperature at which a liquid gives off a flammable vapor when heated using the Pensky-Martens Closed Cup Tester method in accordance with ASTM D–93 (incorporated by reference, see 46 CFR 175.600).

* * * * *

■ 301. Revise § 175.540(c) to read as follows:

§ 175.540 Equivalents.

* * * * *

(c) The Commandant may approve a novel lifesaving appliance or arrangement as an equivalent if it has performance characteristics at least equivalent to the appliance or arrangement required under this part, and:

(1) Is evaluated and tested under IMO Resolution A. 520(13) (incorporated by reference, see 46 CFR 175.600); or

(2) Has successfully undergone an evaluation and tests that are substantially equivalent to those recommendations.

* * * * *

■ 302. Revise § 175.600 to read as follows:

§ 175.600 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) The material approved for incorporation by reference in this subchapter and the sections affected are shown in Table 175.600:

TABLE 175.600: SUBCHAPTER T INCORPORATIONS BY REFERENCE

Standards organization and name of standard	Section(s) incorporating the standard
American Boat and Yacht Council (ABYC), 613 Third Street, Suite 10, Annapolis, MD 21403	
A–1–93—Marine Liquefied Petroleum Gas (LPG) Systems (''ABYC A–1'')	184.240.
A–3–93—Galley Stoves (''ABYC A–3'')	184.200.
A–7–70—Boat Heating Systems (''ABYC A–7'')	184.200.
A–16–89—Electric Navigation Lights (''ABYC A–16'')	183.130.
A–22–93—Marine Compressed Natural Gas (CNG) Systems (''ABYC A–22'')	184.240.
E–8 Alternating Current (AC) Electrical Systems on Boats (July 2001) (''ABYC E–8'')	183.130; 183.340.
E–9 Direct Current (DC) Electrical Systems on Boats (May 28, 1990) (''ABYC E–9'')	183.130; 183.340.
H–2–89—Ventilation of Boats Using Gasoline (''ABYC H–2'')	183.130; 182.460.
H–22–86—DC Electric Bilge Pumps Operating Under 50 Volts (''ABYC H–22'')	182.130; 182.500.
H–24–93—Gasoline Fuel Systems (''ABYC H–24'')	182.130; 182.440; 182.445; 182.450; 182.455.
H–25–94—Portable Gasoline Fuel Systems for Flammable Liquids (''ABYC H–25'')	182.130; 182.458.
H–32–87—Ventilation of Boats Using Diesel Fuel (''ABYC H–32'')	182.130; 182.465; 182.470.
H–33–89—Diesel Fuel Systems (''ABYC H–33'')	182.130; 182.440; 182.445; 182.450; 182.455.
P–1–93—Installation of Exhaust Systems for Propulsion and Auxiliary Engines (''ABYC P–1'').	177.405; 177.410; 182.130; 182.425; 182.430.
P–4–89—Marine Inboard Engines (''ABYC P–4'')	182.130; 182.420.
American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060	
Guide for High Speed Craft, 1997 (''ABS High Speed Craft'')	177.300.
Rules for Building and Classing Aluminum Vessels, 1975 (''ABS Aluminum Vessel Rules'')	177.300.
Rules for Building and Classing Reinforced Plastic Vessels, 1978 (''ABS Plastic Vessel Rules'').	177.300.
Rules for Building and Classing Steel Vessels, 1995 (''ABS Steel Vessel Rules'')	183.360.

TABLE 175.600: SUBCHAPTER T INCORPORATIONS BY REFERENCE—Continued

Standards organization and name of standard	Section(s) incorporating the standard
Rules for Building and Classing Steel Vessels Under 61 Meters (200 feet) in Length, 1983 (''ABS Steel Vessel Rules (< 61 Meters)'').	177.300.
Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1995 (''ABS Steel Vessel Rules (Rivers/Intracoastal)'').	177.300.
American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036	
A 17.1–1984, including supplements A 17.1a and B–1985—Safety Code for Elevators and Escalators (''ANSI A 17.1'').	183.540.
B 31.1–1986—Code for Pressure Piping, Power Piping (''ANSI B 31.1'')	182.710.
Motor Vehicles Operating on Land Highways (''ANSI Z 26.1'')	177.1030.
ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.	
ASTM B 96–93, Standard Specification for Copper–Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels (''ASTM B 96'').	182.440.
ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus (''ASTM B 117'').	175.400.
ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar (''ASTM B 122'').	182.440.
ASTM B 127–98, Standard Specification for Nickel-Copper Alloy (UNS NO4400) Plate, Sheet, and Strip (''ASTM B 127'').	182.440.
ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar (''ASTM B 152'').	182.440.
ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate (''ASTM B 209'').	182.440.
ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester (''ASTM D 93'').	175.400.
ASTM D 635–97, Standard test Method for Rate of Burning and or Extent and Time of Burning of Self-Supporting Plastics in a Horizontal Position (''ASTM D 635'').	182.440.
ASTM D 2863–95, Standard Method for Measuring the Minimum Oxygen Concentration to Support Candle-Like Combustion of Plastics (Oxygen Index) (''ASTM D 2863'').	182.440.
ASTM E 84–98, Standard Test Method for Surface Burning Characteristics of Building Materials (''ASTM E 84'').	177.410.
Institute of Electrical and Electronics Engineers, Inc. (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854	
Standard 45–1977—Recommended Practice for Electrical Installations on Shipboard (''IEEE 45–1977'').	183.340.
International Organization for Standardization (ISO), Case postale 56, CH–1211 Geneva 20, Switzerland	
ISO 8846, Small Craft-Electrical Devices-Protection Against Ignition of Surrounding Flammable Gases (Dec. 1990) (''ISO 8846'').	182.500.
ISO 8849, Small Craft-Electrically Operated Bilge Pumps (Dec. 15, 1990) (''ISO 8849'')	182.500.
International Maritime Organization (IMO), International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom	
Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-Saving Appliances and Arrangements-Resolution A.520(13), dated 17 November 1983 (''IMO Resolution A.520(13)'').	175.540.
Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances-Resolution A.658(16), dated 20 November 1989 (''IMO Resolution A.658(16)'').	185.604.
Fire Test Procedures For Ignitability of Bedding Components, Resolution A.688(17), dated 06 November 1991 (''IMO Resolution A.688(17)'').	177.405.
Symbols Related to Life-Saving Appliances and Arrangements, Resolution A.760(18), dated 17 November 1993 (''IMO Resolution A.760(18)''.	185.604.
Lloyd's Register of Shipping, 71 Fenchurch Street, London EC3M 4BS	
Rules and Regulations for the Classification of Yachts and Small Craft, as amended through 1983 (''Lloyd's Yachts and Small Craft'').	177.300.
National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–9101.	
NFPA 10–1994—Portable Fire Extinguishers (''NFPA 10'')	176.810.
NFPA 17–1994—Dry Chemical Extinguishing Systems (''NFPA 17'')	181.425.
NFPA 17A–1994—Wet Chemical Extinguishing Systems (''NFPA 17A'')	181.425.
NFPA 70–1996—National Electrical Code (NEC) (''NFPA 70'')	183.320; 183.340; 183.372.
NFPA 302–1994—Pleasure and Commercial Motor Craft, Chapter 6 (''NFPA 302'')	184.200; 184.240.
NFPA 306–1993—Control of Gas Hazards on Vessels (''NFPA 306'')	176.710.
NFPA 1963–1989—Fire Hose Connections (''NFPA 1963'')	181.320.

TABLE 175.600: SUBCHAPTER T INCORPORATIONS BY REFERENCE—Continued

Standards organization and name of standard	Section(s) incorporating the standard
Naval Publications and Forms Center, Customer Service Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120	
Military Specification MIL–P–21929C (1991)—Plastic Material, Cellular Polyurethane, Foam-in-Place, Rigid (2 and 4 pounds per cubic foot) (“NPFC MIL–P–21929C”).	179.240.
Military Specification MIL–R–21607E(SH) (1990)—Resins, Polyester, Low Pressure Laminating, Fire Retardant (“NPFC MIL–R–21607E(SH)”).	177.410.
Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001	
SAE J–1475—Hydraulic Hose Fittings For Marine Applications, 1984 (“SAE J–1475”)	182.720.
SAE J–1928—Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, August 1989 (“SAE J–1928”).	182.415.
SAE J–1942—Hose and Hose Assemblies for Marine Applications, 1992 (“SAE J–1942”)	182.720.
Underwriters Laboratories Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709	
UL 19–1992—Lined Fire Hose and Hose Assemblies (“UL 19”)	181.320.
UL 174–1989, as amended through June 23, 1994—Household Electric Storage Tank Heaters (“UL 174”).	182.320.
UL 217–1993—Single and Multiple Station Smoke Detectors (“UL 217”)	181.450.
UL 486A–1992—Wire Connectors and Soldering Lugs For Use With Copper Conductors (“UL 486A”).	183.340.
UL 489–1995—Molded-Case Circuit Breakers and Circuit Breaker Enclosures (“UL 489”)	183.380.
UL 595–1991—Marine Type Electric Lighting Fixtures (“UL 595”)	183.410.
UL 710–1990, as amended through September 16, 1993—Exhaust Hoods For Commercial Cooking Equipment (“UL 710”).	181.425.
UL 1058–1989, as amended through April 19, 1994—Halogenated Agent Extinguishing System Units (“UL 1058”).	181.410.
UL 1102–1992—Non integral Marine Fuel Tanks (“UL 1102”)	182.440.
UL 1110–1988, as amended through May 16, 1994—Marine Combustible Gas Indicators (“UL 1110”).	182.480.
UL 1111–1988—Marine Carburetor Flame Arresters (“UL 1111”)	182.415.
UL 1113, Electrically Operated Pumps for Nonflammable Liquids, Marine, Third Edition (Sep. 4, 1997) (“UL 1113”).	182.520.
UL 1453–1988, as amended through June 7, 1994—Electric Booster and Commercial Storage Tank Water Heaters (“UL 1453”).	182.320.
UL 1570–1995—Fluorescent Lighting Fixtures (“UL 1570”)	183.410.
UL 1571–1995—Incandescent Lighting Fixtures (“UL 1571”)	183.410.
UL 1572–1995—High Intensity Discharge Lighting Fixtures (“UL 1572”)	183.410.
UL 1573–1995—Stage and Studio Lighting Units (“UL 1573”)	183.410.
UL 1574–1995—Track Lighting Systems (“UL 1574”)	183.410.

PART 176—INSPECTION AND CERTIFICATION

■ 303. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 304. Revise § 176.710(a) introductory text to read as follows:

§ 176.710 Inspection and testing prior to hot work.

(a) An inspection for flammable or combustible gases must be conducted by a certified marine chemist or other person authorized by the cognizant OCMI in accordance with the provisions of NFPA 306 (incorporated by reference, see 46 CFR 175.600) before alterations, repairs, or other operations involving riveting, welding, burning, or other fire producing actions may be made aboard a vessel: * * *

* * * * *

■ 305. Revise § 176.810(b)(1) to read as follows:

§ 176.810 Fire protection.

* * * * *

(b) * * *

(1) For portable fire extinguishers, the inspections, maintenance procedures, and hydrostatic pressure tests required by Chapter 4 of NFPA 10 (incorporated by reference, 46 CFR 175.600) with the frequency specified by NFPA 10. In addition, carbon dioxide and Halon portable fire extinguishers must be refilled when the net content weight loss exceeds that specified for fixed systems by Table 176.810(b). The owner or managing operator shall provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility must be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

* * * * *

PART 177—CONSTRUCTION AND ARRANGEMENT

■ 306. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 307. Revise § 177.300 to read as follows:

§ 177.300 Structural design.

Except as otherwise allowed by this subpart, a vessel must comply with the structural design requirements of one of

the standards listed below for the hull material of the vessel.

(a) Wooden hull vessels: Lloyd's Yachts and Small Craft (incorporated by reference, see 46 CFR 175.600);

(b) Steel hull vessels:

(1) Lloyd's Yachts and Small Craft; or

(2) ABS Steel Vessel Rules (< 61 Meters)(incorporated by reference, see 46 CFR 175.600);

(c) Fiber reinforced plastic vessels:

(1) Lloyd's Yachts and Small Craft;

(2) ABS Plastic Vessel Rules (incorporated by reference, see 46 CFR 175.600); or

(3) ABS High Speed Craft (incorporated by reference, see 46 CFR 175.600);

(d) Aluminum hull vessels:

(1) Lloyd's Yachts and Small Craft; or

(i) For a vessel of more than 30.5 meters (100 feet) in length: ABS Aluminum Vessel Rules (incorporated by reference, see 46 CFR 175.600); or

(ii) For a vessel of not more than 30.5 meters (100 feet) in length: ABS Steel Vessel Rules (< 61 Meters), with the appropriate conversions from the ABS Aluminum Vessel Rules; or

(2) ABS High Speed Craft;

(e) Steel hull vessels operating in protected waters: ABS Steel Vessel Rules (Rivers/Intracoastal) (incorporated by reference, see 46 CFR 175.600).

■ 308. Revise § 177.405(b) and (g)(2) to read as follows:

§ 177.405 General arrangement and outfitting.

* * * * *

(b) *Combustibles insulated from heated surfaces.* Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from combustible material. Dry exhaust systems for internal combustion engines on wooden or fiber reinforced plastic vessels must be installed in accordance with ABYC P–1 (incorporated by reference, see 46 CFR 175.600).

* * * * *

(g) * * *

(2) IMO Resolution A.688(17) (incorporated by reference, see 46 CFR 175.600). Mattresses that are tested to this standard may contain polyurethane foam.

■ 309. Revise § 177.410(a), the introductory text of paragraph (b), and (c)(2) to read as follows:

§ 177.410 Structural fire protection.

(a) *Cooking areas.* Vertical or horizontal surfaces within 910 millimeters (3 feet) of cooking appliances must have an ASTM E–84 (incorporated by reference, see 46 CFR 175.600) flame spread rating of not more than 75. Curtains, draperies, or free hanging fabrics must not be fitted within 910 millimeters (3 feet) of cooking or heating appliances.

(b) *Composite materials.* When the hull, bulkheads, decks, deckhouse, or superstructure of a vessel is partially or completely constructed of a composite material, including fiber reinforced plastic, the resin used must be fire retardant and meet as accepted by the Commandant as meeting NPFC MIL–R–21607E(SH) (incorporated by reference, see 46 CFR 175.600). Resin systems that have not been accepted as meeting NPFC MIL–R–21607E(SH) may be accepted as fire retardant if they have an ASTM E–84 flame spread rating of not more than 100 when tested in laminate form. The laminate submitted for testing the resin system to ASTM E–84 must meet the following requirements: * * *

(c) * * *

(2) *Sources of ignition.* Electrical equipment and switch boards must be protected from fuel or water sources. Fuel lines and hoses must be located as far as practical from heat sources. Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitability insulated from any woodwork or other combustible matter. Internal combustion engine dry exhaust systems must be installed in accordance with ABYC P–1 (incorporated by reference, see 46 CFR 175.600).

* * * * *

■ 310. Revise § 177.1030(b) to read as follows:

§ 177.1030 Operating station visibility.

* * * * *

(b) Glass or other glazing material used in windows at the operating station must have a light transmission of not less than 70 percent according to Test 2 of ANSI Z 26.1 (incorporated by reference, see 46 CFR 175.600) and must comply with Test 15 of ANSI Z 26.1 for Class I Optical Deviation.

PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

■ 311. The authority citation for part 179 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 312. Revise § 179.240(b)(1) to read as follows:

§ 179.240 Foam flotation material.

(b) * * *

(1) All foam must comply with NPFC MIL-P–21929C (incorporated by reference, see 46 CFR 175.600). The fire resistance test is not required.

* * * * *

PART 181—FIRE PROTECTION EQUIPMENT

■ 313. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 314. Revise § 181.320(b)(1) and (3) to read as follows:

§ 181.320 Fire hoses and nozzles.

* * * * *

(b) * * *

(1) Be lined commercial fire hose that conforms to UL 19 (incorporated by reference, see 46 CFR 175.600) or hose that is listed and labeled by an independent laboratory recognized by the Commandant as being equivalent in performance;

* * * * *

(3) Have fittings of brass or other suitable corrosion-resistant material that comply with NFPA 1963 (incorporated by reference, see 46 CFR 175.600) or other standard specified by the Commandant.

* * * * *

■ 315. Revise § 181.410(g)(1) to read as follows:

§ 181.410 Fixed gas fire extinguishing systems.

* * * * *

(g) *Specific requirements for Halon 1301 systems.* (1) A custom engineering fixed gas fire extinguishing system, which uses Halon 1301, must comply with the applicable sections of UL 1058 (incorporated by reference, see 46 CFR 175.600) and the requirements of this paragraph (g).

* * * * *

■ 316. Revise § 181.425 to read as follows:

§ 181.425 Galley hood fire extinguishing systems.

(a) A grease extraction hood required by 46 CFR 181.400 must meet UL 710 (incorporated by reference, see 46 CFR 175.600) or other standard specified by the Commandant.

(b) A grease extraction hood must be equipped with a dry or wet chemical fire extinguishing system meeting the applicable sections of NFPA 17 or NFPA 17A (both incorporated by reference, see 46 CFR 175.600), or other standard specified by the Commandant, and must

be listed by an independent laboratory recognized by the Commandant.

■ 317. Revise § 181.450(a)(1) to read as follows:

§ 181.450 Independent modular smoke detecting units.

(a) * * *

(1) Meet UL 217 (incorporated by reference, see 46 CFR 175.600) and be listed as a ''Single Station Smoke detector—Also suitable for use in Recreational Vehicles,'' or other standard specified by the Commandant;

* * * * *

PART 182—MACHINERY INSTALLATION

■ 318. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 319. Revise § 182.130 to read as follows:

§ 182.130 Alternative standards.

As an alternative to complying with the provisions of this part, a vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, and propelled by gasoline or diesel internal combustion engines, other than a High Speed Craft, may comply with ABYC H–2, ABYC H–22, ABYC H–24, ABYC H–25, ABYC H–32, ABYC H–33, ABYC P–1, and ABYC P–4 (all eight standards incorporated by reference, see 46 CFR 175.600) as specified in this part.

■ 320. Revise § 182.320(a)(3) to read as follows:

§ 182.320 Water heaters.

(a) * * *

(3) Is listed under UL 174, UL 1453 (both incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant; and

* * * * *

■ 321. Revise § 182.415(c)(1) to read as follows:

§ 182.415 Carburetors.

* * * * *

(c) * * *

(1) A backfire flame arrester complying with SAE J–1928 or UL 1111 (both incorporated by reference; see 46 CFR 175.600) and marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.

* * * * *

■ 322. Revise § 182.420(b) to read as follows:

§ 182.420 Engine cooling.

* * * * *

(b) An engine water cooling system on a vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, may comply with the requirements of ABYC P–4 (incorporated by reference; see 46 CFR 175.600) instead of the requirements of paragraph (a) of this section.

* * * * *

■ 323. Revise § 182.425(c) to read as follows:

§ 182.425 Engine exhaust cooling.

* * * * *

(c) Engine exhaust cooling system built in accordance with the requirements of ABYC P–1 (incorporated by reference; see 46 CFR 175.600) will be considered as meeting the requirements of this section.

■ 324. Revise § 182.430(k) to read as follows:

§ 182.430 Engine exhaust pipe installation.

* * * * *

(k) Engine exhaust pipe installations built in accordance with the requirements of ABYC P–1 (incorporated by reference; see 46 CFR 175.600), will be considered as meeting the requirements of this section.

■ 325. Revise § 182.440 to read as follows—

§ 182.440 Independent fuel tanks.

(a) *Materials and construction.* Independent fuel tanks must be designed and constructed as described in this paragraph (a).

(1) The material used and the minimum thickness allowed must be as indicated in Table 182.440(a)(1), except that other materials that provide equivalent safety may be approved for use under paragraph (a)(3) of this section. Tanks having a capacity of more than 570 liters (150 gallons) must be designed to withstand the maximum head to which they may be subjected in service, but in no case may the thickness be less than that specified in Table 182.440(a)(1).

TABLE 182.440(a)(1)

Material	ASTM specification (all incorporated by reference; see 46 CFR 175.600)	Thickness in millimeters (inches) and [gage number][1] vs. tank capacities for:		
		4 to 300 liter (1 to 80 gal) tanks	More than 300 liter (80 gal) and not more than 570 liter (150 gal) tanks	Over 570 liter (150 gal)[2] tanks
Nickel-copper	B 127, hot rolled sheet or plate	0.94 (0.037) [USSG 20][3].	1.27 (0.050) [USSG 18].	2.72 (0.107) [USSG 12].
Copper-nickel[4]	B 122, UNS alloy C71500	1.14 (0.045) [AWG 17]	1.45 (0.057) [AWG 15]	3.25 (0.128) [AWG 8].
Copper[4]	B 152, UNS alloy C11000	1.45 (0.057) [AWG 15]	2.06 (0.081) [AWG 12]	4.62 (0.182) [AWG 5].
Copper-silicon[4]	B 96, alloys C65100 and C65500	1.29 (0.051) [AWG 16]	1.63 (0.064) [AWG 14]	3.66 (0.144) [AWG 7].
Steel or iron[5,6]		1.90 (0.0747) [MSG 14].	2.66 (0.1046) [MSG 12].	4.55 (0.1793) [MSG 7].
Aluminum[7]	B 209, alloy 5052, 5083, 5086	6.35 (0.250) [USSG 3]	6.35 (0.250) [USSG 3]	6.35 (0.250) [USSG 3].
Fiber reinforced plastic.		As required[8]	As required[8]	As required[8].

[1] The gage numbers used in this table may be found in many standard engineering reference books. The letters ''USSG'' stand for ''U.S. Standard Gage,'' which was established by the act of March 3, 1892 (15 U.S.C. 206), for sheet and plate iron and steel. The letters ''AWG'' stand for ''American Wire Gage'' (or Brown and Sharpe Gage) for nonferrous sheet thicknesses. The letters ''MSG'' stand for ''Manufacturer's Standard Gage'' for sheet steel thickness.

[2] Tanks over 1514 liters (400 gallons) must be designed with a factor of safety of four on the ultimate strength of the material used with a design head of not less than 1220 millimeters (4 feet) of liquid above the top of the tank.

[3] Nickel-copper not less than 0.79 millimeter (0.031 inch) [USSG 22] may be used for tanks up to 114-liter (30-gallon) capacity.

[4] Acceptable only for gasoline service.

[5] Gasoline fuel tanks constructed of iron or steel, which are less than 5 millimeter (0.1875) inch) thick, must be galvanized inside and outside by the hot dip process. Tanks intended for use with diesel oil must not be internally galvanized.
[6] Stainless steel tanks are not included in this category.
[7] Anodic to most common metals. Avoid dissimilar metal contact with tank body.
[8] The requirements of 46 CFR 182.440(a)(2) apply.

(2) Fiber reinforced plastic may be used for diesel fuel tanks under the following provisions:

(i) The materials must be fire retardant. Flammability of the material must be determined by the standard test methods in ASTM D 635 and ASTM D 2863 (both incorporated by reference; see 46 CFR 175.600), or other standard specified by the Commandant. The results of these tests must show that the average extent of burning is less than 10 millimeters (0.394 inches), the average time of burning is less than 50 seconds, and the limiting oxygen index is greater than 21.

(ii) Tanks must meet UL 1102 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant. Testing may be accomplished by an independent laboratory or by the fabricator to the satisfaction of the OCMI.

(iii) Tanks must be designed to withstand the maximum heat to which they may be subjected to in service.

(iv) Installation of nozzles, flanges or other fittings for pipe connections to the tanks must be acceptable to the cognizant OCMI.

(v) Baffle plates, if installed, must be of the same material and not less than the minimum thickness of the tank walls. Limber holes at the bottom and air holes at the top of all baffles must be provided. Baffle plates must be installed at the time the tests required by UL 1102, or other standard specified by the Commandant, are conducted.

(3) Materials other than those listed in Table 182.440(a)(1) must be approved by the Commandant. An independent tank using material approved by the Commandant under this paragraph must meet the testing requirements of UL 1102, or other standard specified by the Commandant. Testing may be accomplished by an independent laboratory or by the fabricator to the satisfaction of the OCMI.

(4) Tanks with flanged-up top edges that may trap and hold moisture are prohibited.

(5) Openings for fill pipes, vent pipes, and machinery fuel supply pipes, and openings for fuel level gauges, where used, must be on the topmost surfaces of tanks. Tanks may not have any openings in bottoms, sides, or ends, except for:

(i) An opening fitted with a threaded plug or cap installed for tank cleaning purposes; and

(ii) In a diesel fuel tank, openings for supply piping and tubular gauge glasses.

(6) All tank joints must be welded or brazed. Lap joints may not be used.

(7) Nozzles, flanges, or other fittings for pipe connections to a metal tank must be welded or brazed to the tank. Tank openings in way of pipe connections must be properly reinforced where necessary. Where fuel level gauges are used on a metal tank, the flanges to which gauge fittings are attached must be welded or brazed to the tank. No tubular gauge glasses may be fitted to gasoline fuel tanks. Tubular gauge glasses, if fitted to diesel fuel tanks, must be of heat resistant materials, adequately protected from mechanical damage, and provided at the tank connections with devices that will automatically close in the event of rupture of the gauge or gauge lines.

(8) A metal tank exceeding 760 millimeters (30 inches) in any horizontal dimension must:

(i) Be fitted with vertical baffle plates, which meet subparagraph (a)(9) of this section, at intervals not exceeding 760 millimeters (30 inches) to provide strength and to control the excessive surge of fuel; or

(ii) The owner must submit calculations to the cognizant OCMI demonstrating the structural adequacy of the tank in a fully loaded static condition and in a worst case dynamic (sloshing) condition.

(9) Baffle plates, where required in metal tanks, must be of the same material and not less than the minimum thickness required in the tank walls and must be connected to the tank walls by welding or brazing. Limber holes at the bottom and air holes at the top of all baffles must be provided.

(10) Iron or steel diesel fuel tanks must not be galvanized on the interior. Galvanizing, paint, or other suitable coating must be used to protect the outside of iron and steel diesel fuel tanks and the inside and outside of iron and steel gasoline fuel tanks.

(b) *Location and installation.* Independent fuel tanks must be located and installed as described in this paragraph (b).

(1) Fuel tanks must be located in, or as close as practicable to, machinery spaces.

(2) Fuel tanks and fittings must be so installed as to permit examination, testing, or removal for cleaning with minimum disturbance to the hull structure.

(3) Fuel tanks must be adequately supported and braced to prevent movement. The supports and braces must be insulated from contact with the tank surfaces with a nonabrasive and nonabsorbent material.

(4) All fuel tanks must be electrically bonded to a common ground.

(c) *Tests.* Independent fuel tanks must be tested as described in this paragraph (c) prior to being used to carry fuel.

(1) Prior to installation, tanks vented to the atmosphere must be hydrostatically tested to, and must withstand, a pressure of 35 kPa (5 psig) or 11/2 times the maximum pressure head to which they may be subjected in service, whichever is greater. A standpipe of 3.5 meters (11.5 feet) in height attached to the tank may be filled with water to accomplish the 35 kPa (5 psig) test. Permanent deformation of the tank will not be cause for rejection unless accompanied by leakage.

(2) After installation of the fuel tank on a vessel, the complete installation must be tested in the presence of a marine inspector, or individual specified by the cognizant OCMI, to a heat not less than that to which the tank may be subjected in service. Fuel may be used as the testing medium.

(3) All tanks not vented to the atmosphere must be constructed and tested in accordance with 46 CFR 182.330.

(d) *Alternative procedures.* A vessel of not more than 19.8 meters (65 feet) in length carrying not more than 12 passengers, with independent gasoline fuel tanks built in accordance with ABYC H–24 (incorporated by reference, see 46 CFR 175.600), or 33 CFR 183, subpart J, or with independent diesel fuel tanks built in accordance with ABYC H–33 (incorporated by reference, see 46 CFR 175.600), will be considered as meeting the requirements of this section. However, tanks must not be fabricated from any material not listed in Table 182.440(a)(1) without approval by the Commandant under paragraph (a)(3) of this section.

■ 326. Revise § 182.445(f) to read as follows:

§ 182.445 Fill and sounding pipes for fuel tanks.

* * * * *

(f) A vessel of not more than 19.8 meters (65 feet), carrying not more than

12 passengers, with a gasoline fuel system built in accordance with ABYC H–24 (incorporated by reference; see 46 CFR 175.600), or 33 CFR 183, subpart J, or with a diesel fuel system built in accordance with ABYC H–33 (incorporated by reference; see 46 CFR 175.600), will be considered as meeting the requirements of this section.

* * * * *

■ 327. Revise § 182.450(f) to read as follows:

§ 182.450 Vent pipes for fuel tanks.

* * * * *

(f) A vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, with fuel gasoline tank vents built in accordance with ABYC H–24 (incorporated by reference; see 46 CFR 175.600), or 33 CFR 183, subpart J, or with diesel fuel tank vents built in accordance with ABYC H–33 (incorporated by reference; see 46 CFR 175.600), will be considered as meeting the requirements of this section.

* * * * *

■ 328. Revise § 182.455(c) to read as follows:

§ 182.455 Fuel piping.

* * * * *

(c) *Alternative procedures.* A vessel of not more than 19.8 meters (65 feet), carrying no more than 12 passengers, with machinery powered by gasoline and a fuel system built in accordance with ABYC H–24 (incorporated by reference; see 46 CFR 175.600), or 33 CFR 183, subpart J, or with machinery powered by diesel fuel and a fuel system built in accordance with ABYC H–33 (incorporated by reference; see 46 CFR 175.600), will be considered as meeting the requirements of this section.

■ 329. Revise § 182.458(b) to read as follows:

§ 182.458 Portable fuel systems.

* * * * *

(b) The design, construction, and stowage of portable tanks and related fuel lines and accessories must meet the requirements of ABYC H–25 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant.

■ 330. Revise § 182.460(m) to read as follows:

§ 182.460 Ventilation of spaces containing machinery powered by, or fuel tanks for, gasoline.

* * * * *

(m) A vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, with ventilation installations in accordance with ABYC H–2 (incorporated by reference; see 46 CFR 175.600) or 33 CFR 183, subpart K, ''Ventilation,'' will be considered as meeting the requirements of this section.

■ 331. Revise § 182.465(i) to read as follows:

§ 182.465 Ventilation of spaces containing diesel machinery.

* * * * *

(i) A vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, with ventilation installations in accordance with ABYC H–32 (incorporated by reference; see 46 CFR 175.600) will be considered as meeting the requirements of this section.

■ 332. Revise § 182.470(c) to read as follows:

§ 182.470 Ventilation of spaces containing diesel fuel tanks.

* * * * *

(c) A vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, with ventilation installations in accordance with ABYC H–32 (incorporated by reference; see 46 CFR 175.600) will be considered as meeting the requirements of this section.

■ 333. Revise § 182.480(a) to read as follows:

§ 182.480 Flammable vapor detection systems.

(a) A flammable vapor detection system required by § 182.410(c) must meet UL 1110 (incorporated by reference; see 46 CFR 175.600) or be approved by an independent laboratory.

* * * * *

■ 334. Revise § 182.500(b) to read as follows:

§ 182.500 General.

* * * * *

(b) A vessel of not more than 19.8 meters (65 feet) in length, carrying not more than 12 passengers, may meet the requirements of ABYC H–22 or the requirements in ISO 8846 and ISO 8849 (all three standards incorporated by reference; see 46 CFR 175.600), instead of those of this subpart, provided that each watertight compartment forward of the collision bulkhead is provided with a means for dewatering.

* * * * *

■ 335. Revise § 182.520(e)(1) to read as follows:

§ 182.520 Bilge pumps.

* * * * *

(e) * * *

(1) The pump is listed by an independent laboratory as meeting the requirements in UL 1113 (incorporated by reference; see 46 CFR 175.600);

* * * * *

■ 336. Revise § 182.710(c)(2) to read as follows:

§ 182.710 Piping for vital systems.

* * * * *

(c) * * *

(2) If subject to a pressure of more than 1,034 kPa (150 psig), be designed, fabricated, and inspected in accordance with the principles of ANSI B 31.1 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant.

■ 337. In § 182.720, revise the introductory paragraph of paragraph (e) and paragraph (e)(1) to read as follows:

§ 182.720 Nonmetallic piping materials.

* * * * *

(e) Where flexible nonmetallic hose is permitted for use in piping systems by this section, it must meet SAE J–1942 (incorporated by reference; see 46 CFR 175.600) or be specifically approved by the Commandant. The following restrictions apply:

(1) Flexible nonmetallic hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, or field attachable type fittings may be used. Hose end fittings must comply with SAE J–1475 (incorporated by reference; see 46 CFR 175.600). Field attachable fittings must be installed following the manufacturer's recommended practice. If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. If field attachable type fittings are used, each hose assembly must be individually hydrostatically tested to twice the maximum operating pressure of the system;

* * * * *

PART 183—ELECTRICAL INSTALLATION

■ 338. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 339. Add new § 183.230 to read as follows:

§ 183.230 Temperature ratings.

Temperature ratings of electrical equipment must meet the requirements of 46 CFR 111.01–15.

■ 340. Revise § 183.320(d) and (e) to read as follows:

§ 183.320 Generators and motors.

* * * * *

(d) Each generator must have a nameplate attached to it containing the information required by Article 445 of NFPA 70 (incorporated by reference; see 46 CFR 175.600), and for a generator derated in accordance with paragraph (b)(2) of this section, the derated capacity.

(e) Each motor must have a nameplate attached to it containing the information required by Article 430 of NFPA 70, and for a motor derated in accordance with paragraph (b)(2) of this section, the derated capacity.

* * * * *

■ 341. In § 183.340, revise paragraphs (b)(4), (d)(1), (i) introductory text, and (o) to read as follows:

§ 183.340 Cable and wiring requirements.

* * * * *

(b) * * *

(4) Be installed with metal supports spaced not more than 610 millimeters (24 inches) apart, and in such a manner as to avoid chafing and other damage. The use of plastic tie wraps must be limited to bundling or retention of multiple cable installations, and not used as a means of support, except that on vessels of not more than 19.8 meters (65 feet) in length, installations in accordance with paragraph 14.h of ABYC E–8 and paragraph 15.h of ABYC E–9 (both incorporated by reference; see 46 CFR 175.600) are acceptable as meeting the requirements of this section;

* * * * *

(d) * * *

(1) Meet Section 310–13 of NFPA 70 (incorporated by reference; see 46 CFR 175.600) except that asbestos insulated cable and dry location cables may not be used;

* * * * *

(i) Each pressure type wire connector and lug must meet UL 486A (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant. The use of twist-on type wire nuts is permitted under the following conditions:

* * * * *

(o) Ampacities of wires must meet Section 310–15 of NFPA 70 or other standard specified by the Commandant. Ampacities of cable must meet table A6 of IEEE 45–1977 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant.

* * * * *

■ 342. Revise § 183.360(b)(3) to read as follows:

§ 183.360 Semiconductor rectifier systems.

* * * * *

(b) * * *

(3) Meet Sections 35.84.2 and 35.84.4 of the ABS Steel Vessel Rules (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant.

■ 343. Revise § 183.372(c) to read as follows:

§ 183.372 Equipment and conductor grounding.

* * * * *

(c) Equipment grounding conductors must be sized in accordance with Section 250–96 of NFPA 70 (incorporated by reference; see 46 CFR 175.600), or other standard specified by the Commandant.

* * * * *

■ 344. Revise the introductory paragraph of § 183.380(m) to read as follows:

§ 183.380 Overcurrent protection.

* * * * *

(m) Each circuit breaker must meet UL 489 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant, and be of the manually reset type designed for:

* * * * *

■ 345. Revise § 183.410(d) to read as follows:

§ 183.410 Lighting fixtures.

* * * * *

(d) An exterior lighting fixture in an electrical system operating at more than 50 volts must comply with the requirements of UL 595 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant. A lighting fixture in an accommodation space, radio room, galley or similar interior space may comply with UL 1570, UL 1571, UL 1572, UL 1573, or UL 1574 (all five standards incorporated by reference; see 46 CFR 175.600) as long as the general marine requirements of UL 595 are satisfied.

■ 346. Revise § 183.540 to read as follows:

§ 183.540 Elevators.

Each elevator on a vessel must meet the requirements of ANSI A 17.1 (incorporated by reference; see 46 CFR 175.600) or other standard specified by the Commandant.

PART 185—OPERATIONS

■ 347. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 348. In § 185.604 revise paragraphs (f), (h), and (i) to read as follows:

§ 185.604 Lifesaving equipment markings.

* * * * *

(f) The number and identification of the items stowed inside, and their sizes, must be marked in clearly legible letters and numbers on each container for life jackets and immersion suits. Identification of the items may be in words, or the appropriate symbols in IMO Resolution A.760(18) (incorporated by reference; see 46 CFR 175.600). Letters and numbers must be at least 50 millimeters (2 inches) high. Symbols must be at least 100 mm (4 inches) square.

* * * * *

(h) Each life jacket must be marked with Type I retroreflective material approved in 46 CFR 164.018 or other standard specified by the Commandant. The arrangement of the retroreflective material applied after March 11, 1996, must be as specified by IMO Resolution A.658(16) (incorporated by reference; see 46 CFR 175.600).

(i) Each rescue boat and ring life buoy must be marked with Type II retroreflective material approved in accordance with 46 CFR 164.018 or other standard specified by the Commandant. The arrangement of the retroreflective material applied after March 11, 1996, must be as specified by IMO Resolution A.658(16).

Dated: September 22, 2008.

J.G. Lantz,

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

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Federal Register

Friday,
October 31, 2008

Part V

Department of Veterans Affairs

38 CFR Part 5
Payments and Adjustments to Payments; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AM06

Payments and Adjustments to Payments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language provisions applicable to payment of VA benefits and adjustments to payments. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries and VA personnel in locating and understanding these rules.

DATES: Comments must be received by VA on or before December 30, 2008.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''RIN 2900–AM06—Payments and Adjustments to Payments.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director of Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–4902 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 ''VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs.'' The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing, and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding general rate-setting and adjustment and resumption of benefits. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

Overview of New Part 5 Organization.
Overview of This Notice of Proposed Rulemaking.
Table Comparing Current Part 3 Rules with Proposed Part 5 Rules.
Content of Proposed Regulations.
General Rate-Setting and Payments
5.690 Where to find benefit rates and income limits.
5.691 Adjustments for fractions of dollars.
5.692 Fractions of one cent not paid.
5.693 Beginning date for certain VA benefit payments.
5.694 Surviving spouse's benefit for the month of the veteran's death.
5.695 Payments to or for a child pursuing a course of instruction at an approved educational institution.
5.696 Awards of dependency and indemnity compensation when not all dependents apply.
5.697 Exchange rates for income received or expenses paid in foreign currencies.
General Reductions, Discontinuances, and Resumptions
5.705 General effective dates for reduction or discontinuance of benefits.
5.706 Payments excluded in calculating income or net worth.
5.707 Deductible medical expenses.
5.708 Eligibility verification reports.
5.709 Claimant and beneficiary responsibility to report changes.
5.710 Adjustment in benefits due to reduction or discontinuance of a benefit to another payee.
5.711 Payment to dependents due to the disappearance of a veteran for 90 days or more.
5.712 Suspension of VA benefits due to the disappearance of a payee.
5.713 Restriction on VA benefit payments to an alien located in enemy territory.
5.714 Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list.
5.715 Claims for undelivered or discontinued benefits.
Endnote Regarding Amendatory Language.
Paperwork Reduction Act of 1995.
Regulatory Flexibility Act.
Executive Order 12866.
Unfunded Mandates.
Catalog of Federal Domestic Assistance Numbers and Titles.
List of Subjects in 38 CFR Part 5.

Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that most of the provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. This organization will enable claimants, beneficiaries, and their representatives, as well as VA adjudicators, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

''Subpart C—Adjudicative Process, General'' would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680. The second, covering general evidence requirements, effective dates for awards, revision of decisions, and protection of VA ratings, was published as proposed on May 22, 2007. *See* 72 FR 28770. The third, concerning

rules on filing VA benefits claims, was published as proposed on April 14, 2008. *See* 73 FR 20136.

''Subpart D—Dependents and Survivors'' would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614. The second, relating to special ratings and ratings for health care eligibility only, was published as proposed on October 17, 2008. *See* 73 FR 62004.

''Subpart F—Nonservice-Connected Disability Pensions and Death Pensions'' would include information regarding the three types of nonservice-connected pension: Old-Law Pension, Section 306 Pension, and Improved Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension and the effective dates governing each pension. This subpart will be published in two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578. The portion concerning eligibility and entitlement requirements, as well as effective dates for Improved Pension, was published as proposed on September 26, 2007. *See* 72 FR 54776.

''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective date rules, and rate-of-payment rules. This subpart was published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

''Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors'' would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart was published as proposed on March 9, 2007. *See* 72 FR 10860.

''Subpart I—Benefits for Certain Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

''Subpart J—Burial Benefits'' would pertain to burial allowances. This subpart was published as proposed on April 8, 2008. *See* 73 FR 19021.

''Subpart K—Matters Affecting the Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

''Subpart L—Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, subpart L will be published in two separate NPRMs, one of which is this NPRM. The first, concerning payments to beneficiaries who are eligible for more than one benefit, was published as proposed on October 2, 2007. *See* 72 FR 56136. The second, concerning provisions applicable to payment of VA benefits and adjustments to payments, is the subject of this document.

The final subpart, ''Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries,'' would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted ''[regulation that will be published in a future Notice of Proposed Rulemaking]'' where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of This Notice of Proposed Rulemaking

This NPRM pertains to those regulations governing payment of benefits, adjustments to payments, and regulations related to resumption of benefits. These regulations would be contained in proposed Subpart L of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the current regulations in part 3 and those proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.690	3.21
5.691(a)	3.260(g)
5.691(b)	3.29(a) and (c)
5.691(c)	3.29(b)
5.692	3.112
5.693(a)	3.31(a)
5.693(b)	Introduction to 3.31.
5.693(c)	3.31(b) and (c)
5.693(c)(1)	3.31(b)
5.693(c)(2)	New.
5.693(c)(3)	3.31(c)(1)
5.693(c)(4)	3.31(c)(3)
5.693(c)(5)	3.31(c)(4)
5.693(c)(6)	3.31(c)(5)
5.693(c)(7)	3.31(c)(3)
5.693(c)(8)	3.31(c)(2)
5.693(c)(9)	3.656(a) and (d)
5.693(d)	3.401(e), 3.750
5.693(e)(1) and (e)(2)	3.31(c)(2)
5.693(e)(3)	Introduction to 3.31.
5.694	3.20
5.695(a)	3.57(a)(1)(iii)
5.695(b)	3.57(a)(1)(iii), 3.667(a)(1) and (a)(2)
5.695(c) and (c)(1)	3.667(a)(3)
5.695(c)(2)	3.667(a)(4)
5.695(c)(3)	3.667(a)(3)
5.695(d)	3.667(a)(5)
5.695(e)	New
5.695(f)	3.667(b)
5.695(g)	3.667(c)
5.695(h)	3.667(d)
5.695(i)	3.667(f)
5.696	3.107
5.697(a)	Introduction to 3.32.
5.697(a)(1)	3.32(a)(1)
5.697(a)(2)	3.32(a)(2)
5.697(b) and (c)	3.32(b)
5.705(a)	Introduction to 3.500, 3.500(a), Introduction to 3.501, Introduction to 3.502, 3.503(a).
5.705(b)	New.
5.706(a) and (b)	New.
5.706(b)(1)	3.261(a)(32)
5.706(b)(2)	3.262(z), 3.263(h), 3.272(v), 3.275(j), 3.261(a)(41)
5.706(b)(3)	3.262(u), 3.263(f), 3.272(p), 3.275(g), 3.261(a)(36)
5.706(b)(4)	New.
5.706(b)(5)	3.262(s), 3.263(e), 3.272(o), 3.275(f), 3.261(a)(35)
5.706(b)(6)	3.262(y), 3.263(g), 3.272(u), 3.275(i), 3.261(a)(40)
5.706(b)(7)	New.
5.706(b)(8)	3.262(v), 3.272(r), 3.261(a)(37)
5.706(b)(9) and (10)	New.
5.706(b)(11)	3.262(x), 3.272(t), 3.261(a)(39)
5.706(b)(12) through (14).	New.
5.706(b)(15)	3.262(q), 3.272(k), 3.261(a)(33) and (a)(34)
5.706(b)(16) through (22).	New.
5.706(b)(23)	3.261(a)(14)
5.706(b)(24)	New.
5.707(a) and (b)	New.
5.707(c)	3.261(b)(1), 3.262(l), 3.272(g)
5.708(a)	3.256(b), 3.277(c)
Introduction to 5.708(b).	3.277(c)(3)
5.708(b)(1)	New.
5.708(b)(2)	3.256(b)(3), 3.277(c)(2)
5.708(c)	New.
5.708(d)	3.661(a)(1) and (2)
5.708(e)	3.256(c), 3.277(d)
5.708(f)(1)	3.256(c), 3.277(d)
5.708(f)(2)	New.
5.708(f)(3)	3.661(b)(2)(i)
5.708(g)	3.661(b)(2)(iii)
5.708(h)	3.661(b)(2)(ii)
5.709(a)	3.256(a), 3.277(a) and (b), 3.660(a)(1)
5.709(b)	3.256(a), 3.277(b)
5.710(a)	3.651(a)
5.710(b)	3.651(b)
5.710(c)	3.651(c)
5.711(a)	3.656(a)
5.711(b)	3.656(a)
5.711(c)	3.656(d)
5.711(d)(1)	3.656(b)
5.711(d)(2)	3.656(c)
5.712	3.158(c)
5.713(a) through (b)(1).	3.653(a)
5.713(b)(2) and (b)(3)	New.
5.713(c)	New.
5.714(a)	New.
5.714(b)	3.653(c)(1)
5.714(c) and (d)	3.653(c)
5.714(e)	3.653(b)
5.714(f)	New.
5.715(a)	New.
5.715(b)(1)	3.653(b)
5.715(b)(2)	3.653(c)(3)
5.715(b)(3)	3.653(b)
5.715(c)	3.653(b)
5.715(d)	3.653(b) and (c)(3)
5.715(e)	3.653(d)
5.715(f)	New.

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

General Rate-Setting and Payments

5.690 Where To Find Benefit Rates and Income Limits

Proposed § 5.690 is based on current § 3.21, with a few changes.

First, we propose to not include in part 5 the reference to appendix B of the Veterans Benefits Administration Manual M21–1 because the reference is outdated and because the rates are available at our Web site, which is easily available to the general public. The proposed regulation would guide readers to that site. Second, we propose to include a reference to the monthly allowances payable under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects. Adding this reference in connection with the general reference to the publication of rates on our Web site will direct readers to one location to find information about most of the rates for benefits payable under part 5.

Current § 3.21 involves monetary rates for VA benefits. The last two sentences of current § 3.21 read:

> The maximum annual rates of improved pension payable under Pub. L. 95–588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents [DIC] are set forth in § 3.25.

Although the rates and income limits for Improved Pension and parents' DIC were at one time contained in §§ 3.23 through 3.25, that is no longer the case. Moreover, the rates and income limits applicable to Improved Pension and parents' DIC, like the other VA benefits described above, are available on our Web site. Therefore, we propose not to include a reference to the part 5 equivalents of current §§ 3.23 through 3.25 in § 5.690.

5.691 Adjustments for Fractions of Dollars

Proposed § 5.691 provides rules regarding how VA rounds to the nearest dollar in various calculations. It restates in plain language current §§ 3.29 and 3.260(g).

Current § 3.260(g) includes rules governing the computation of income for both pension and parents' DIC. (DIC for surviving spouses and children is not based on income.) To clarify that, in the context of DIC, income calculations are relevant only as to parents' DIC, proposed § 5.691(a) would specifically refer to ''parents' dependency and indemnity compensation'' instead of ''dependency and indemnity compensation.''

Sections 5.531 through 5.534, cited in proposed § 5.691(a), were published as proposed on October 21, 2005. *See* 70 FR 61326, 61344–47. Section 5.370, also cited in proposed § 5.691(a), was published as proposed on September 26, 2007. *See* 72 FR 54776, 54792.

We have intentionally omitted from proposed § 5.691(c) the June 1, 1983, applicability date for rates of pension, found in current § 3.29(b). Because these regulations will apply only to claims filed on or after the effective date of part 5, which will be no earlier than 2011, it is exceedingly unlikely that these regulations will apply to pension awards retroactive earlier than 1984. We have also simplified the text for clarity.

5.692 Fractions of One Cent Not Paid

Proposed § 5.692 restates in plain language current § 3.112. VA intends no substantive change.

We note that, with respect to certain benefits, 38 U.S.C. 5312(c)(2) explicitly permits VA to round payments ''in such manner as the Secretary considers equitable and appropriate for ease of administration.'' This statute, combined with VA's general rulemaking authority, gives VA authority to exclude fractions of a cent from payment. VA considers this practice equitable and necessary to efficiently administer the benefit programs covered by proposed 38 CFR part 5.

5.693 Beginning Date for Certain VA Benefit Payments

The Omnibus Budget Reconciliation Act of 1982 (OBRA), Pub. L. 97–253, 96 Stat. 763, introduced a number of Federal cost-saving measures. Section 401 of the OBRA, 96 Stat. at 801, which is now codified at 38 U.S.C. 5111, ''Commencement of period of payment,'' prohibits VA from paying certain benefits for any period before the first day of the calendar month following the month in which the award or increased award of the benefit becomes effective. The provisions of 38 U.S.C. 5111 are currently implemented in § 3.31 and are the subject of proposed § 5.693. We propose several changes from the current regulation.

Proposed § 5.693(b) restates current § 3.31(b) and incorporates with one change the list in the introduction to § 3.31 of the benefits affected by the beginning payment date rule. The benefits affected are disability compensation, pension, dependency and indemnity compensation and monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects. The proposed change is that we not include the reference to Vietnam, which is found in current § 3.31. This change is required because the law no longer limits chapter 18 benefits to children of Vietnam-era service veterans. *See* Pub. L. 108–183, sec. 102, 117 Stat. 2651, 2653 (adding 38 U.S.C. 1821, ''Benefits for children of certain Korea service veterans born with spina bifida''). Therefore, proposed § 5.693(b)(4) simply refers to payment of ''monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects.''

Proposed § 5.693(c) lists payments that are not subject to the general rule found in proposed paragraph (b). The list is derived from current § 3.31(b) and (c). We propose to add a payment not found in the current regulation. The new payment, found in proposed § 5.693(c)(2), pertains to ''[a]wards restoring a previously reduced benefit because the circumstances requiring reduction no longer exist.'' VA does not consider such a restoration of a previously reduced award to be an ''increased award'' as defined by proposed § 5.693(a), but rather a restoration of the pre-adjustment rate. This award is more correctly viewed as a discontinuance of a temporary reduction and not an increase subject to the delayed payments described in proposed paragraph (b) of this section.

Next, we propose to restate with clarifying language an exception found in current § 3.31(c)(4). Current § 3.31(c)(4) includes an exception to the delayed payment provision of OBRA for increases resulting solely from the enactment of certain types of legislation and includes several examples. One example, found at § 3.31(c)(4)(iii), refers to ''[c]hanges in the criteria for statutory award designations.'' The example is taken from examples in the joint House and Senate Committee Conference report regarding OBRA. *See* H.R. Conf. Rep. No. 97–759, at 82 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 1846, 1877. Apart from this example, the term ''statutory award'' does not appear elsewhere in the report. Rather than use the term ''statutory award'' in part 5, we would refer in § 5.693(c)(5)(v) to an ''award of special monthly compensation.'' This is consistent with long-standing VA usage of the term ''statutory award.'' For example, *Talbert* v. *Brown*, 7 Vet. App. 352, 354 (1995), involved entitlement to special monthly compensation under ''a statutory award pursuant to Public Law No. 82–427.'' Public Law No. 82–427, 66 Stat. 295, introduced provisions currently codified in 38 U.S.C. 1114(k), which provides for special monthly compensation to veterans.

Finally, we propose not to include current § 3.31(c)(3)(vi) in part 5. The current regulation excludes an adjustment because of limitations placed on the size of the estate of a hospitalized incompetent veteran. However, the limitation in question was imposed by former 38 U.S.C. 5503(b), which was repealed by section 204(a) of the Veterans Education and Benefits Expansion Act of 2001, Pub. L. 107–103, 115 Stat. 976, 990.

Section 5.461, cited in proposed § 5.693(a)(4), was published as proposed on December 27, 2004. *See* 69 FR 77578, 77588–89. Section 5.745, cited in proposed § 5.693(d)(1), was published as proposed on October 2, 2007. *See* 72 FR 56136, 56149.

5.694 Surviving Spouse's Benefit for the Month of the Veteran's Death

Proposed § 5.694 is a plain language restatement of current § 3.20. The proposed regulation provides rules regarding payment to a surviving spouse for the month of the veteran's death. In proposed paragraph (a) we have created a term, ''month-of-death benefit,'' to serve as shorthand for a payment to a deceased veteran's surviving spouse for the month in which the veteran died and in the amount of disability compensation or pension that the veteran would have received for that month, if not for his or her death. Using this term would make this section easier to read and help ensure clarity.

We propose not to include current § 3.20(a) in proposed § 5.694. Section 3.20(a) currently reads:

> Where the veteran died on or after December 1, 1962, and before October 1, 1982, the rate of death pension or [DIC] otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death. (Authority: 38 U.S.C. 5310)

Any award of benefits under current § 3.20(a) would pertain to a veteran who died between December 1, 1962, and September 30, 1982, more than 25 years ago. The only situation in which

payment of benefits under this paragraph could arise presently is in a retroactive benefit adjustment based on clear and unmistakable error. However, in such a case, VA would be required to apply the provisions of § 3.20(a) in effect at the time the erroneous decision was made, not the current provisions. Therefore, there is no reason to include § 3.20(a) in part 5.

Section 5.550, cited in proposed § 5.694(d), was published as proposed on October 1, 2004. *See* 69 FR 59072, 59085.

5.695 Payments to or for a Child Pursuing a Course of Instruction at an Approved Educational Institution

Proposed § 5.695 is based on current §§ 3.57(a)(1)(iii) and 3.667. The proposed section includes provisions related to payment of additional Improved Pension or disability compensation to a veteran or Improved Pension to a surviving spouse based on a child pursuing a course of instruction at an approved educational institution, and direct payment of Improved Pension or dependency and indemnity compensation (DIC) to a child on or after the child's 18th birthday, but before the child's 23rd birthday, if the child is pursuing a course of instruction at an approved educational institution. Proposed § 5.695(a) defines the term ''approved educational institution'' consistent with the definition of ''educational institution'' in § 3.57(a)(1)(iii).

Whereas current § 3.667(a)(1) and (2) merely indicate that benefits ''may be paid,'' proposed § 5.695(b) specifies which benefits will be paid and to whom. This additional information, only implied by the current regulation, will be helpful to the reader. No substantive change is intended. Section 5.417, cited in proposed § 5.695(b), was published as proposed on September 26, 2007. *See* 72 FR 54776, 54799–800.

We have intentionally not included in proposed § 5.695(c) the reference to September 30, 1981, which appears in current § 3.667(a)(3). This date is not relevant to proposed part 5 because no claim adjudicated under part 5 could pertain to a child then between the ages of 18 and 23 who was age 18 before September 30, 1981. Section 5.573, cited in proposed § 5.695(c), was published as proposed on October 21, 2005. *See* 70 FR 61326, 61348.

Section 5.524, cited in proposed § 5.695(d), was published as proposed on October 21, 2005. *See* 70 FR 61326, 61344.

Proposed § 5.695(e) explains that if a child is pursuing a course of instruction at an approved educational institution on or after the child's 18th birthday and a claim is not received within 1 year, benefits may still be paid to the child effective the date VA receives the child's claim. We propose to include this provision in order to fill a deficiency in the current regulation. The provision is consistent with 38 U.S.C. 5110 (the general effective date statute) and other effective-date provisions found in proposed part 5. It will provide valuable information for regulation users and VA personnel.

Section 5.764, cited in proposed § 5.695(i)(1), was published as proposed on October 2, 2007. *See* 72 FR 56136, 56154.

5.696 Awards of Dependency and Indemnity Compensation When Not All Dependents Apply

Proposed § 5.696 is based on current § 3.107. We have updated the citation to § 3.251(a)(4), contained in current § 3.107, to the proposed part 5 counterpart § 5.536(d), which was published as proposed on October 21, 2005. *See* 70 FR 61326, 61347. Although the language is much clearer in this part 5 regulation, we have not made any substantive changes from current § 3.107.

5.697 Exchange Rates for Income Received or Expenses Paid in Foreign Currencies

Proposed § 5.697 is derived from current § 3.32. The current regulation provides rules pertaining to income received or expenses paid in foreign currencies. We propose the following changes from the current regulation.

Proposed § 5.697(a)(1) states that if VA is informed of a change in a beneficiary's income or expenses paid in a foreign currency that would affect his or her entitlement, VA will make retroactive adjustments to the benefit rate using the quarterly exchange rate in effect when VA receives the notice of the change in income received or expenses paid in a foreign currency.

Current § 3.32(b) references ''burial, plot or headstone allowances.'' We propose to use the phrase ''burial benefits'' instead of using the current phrase, ''burial, plot or headstone allowances,'' to be consistent with the term that we expect to use to describe monetary burial benefits in subpart J of part 5, which is currently being developed by VA.

Sections 5.550 and 5.555, cited in proposed § 5.697(c)(1), were published as proposed on October 1, 2004. *See* 69 FR 59072, 59085–86.

General Reductions, Discontinuances, and Resumptions

5.705 General Effective Dates for Reduction or Discontinuance of Benefits

Currently, §§ 3.500 through 3.503 set forth rules that govern how VA assigns an effective date to a reduction or discontinuance of disability compensation, pension, or dependency and indemnity compensation (DIC). Each of the reduction and discontinuance effective-date regulations contains general rules on the subject. Each regulation also contains multiple paragraphs that apply to a specific, narrow basis for reduction or discontinuance of benefits payable to a specific type of beneficiary. In view of our proposal to organize by benefit and topic the part 5 rewrites of the current part 3 regulations, the specific rules in §§ 3.500 through 3.503 will be organized in the part 5 subpart associated with the specific benefits or subjects to which they apply. Proposed § 5.705 includes generally applicable rules, based on §§ 3.500 through 3.503.

In 38 U.S.C. 5112(a), Congress requires VA to generally fix a reduction or discontinuance of compensation, pension, or DIC ''in accordance with the facts found,'' ''[e]xcept as otherwise specified in [38 U.S.C. 5112].'' Proposed § 5.705(a) states this general rule. We propose to include the monetary allowances under chapter 18 of title 38, United States Code, in the list of benefits to which the general rule applies. Although 38 U.S.C. 5112 does not refer to chapter 18 benefits, 38 U.S.C. 1832(b)(4) makes provisions of 38 U.S.C. 5112(a) and (b) applicable to monetary allowances under chapter 18.

In 38 U.S.C. 5112(b), Congress provides ten specific exceptions to the general rule. In such situations, the effective date of the reduction or discontinuance ''shall be'' assigned as directed in the particular paragraph of section 5112(b), and not as directed by the general ''facts found'' provision in section 5112(a). Thus, section 5112 permits the assignment of an effective date for a reduction or discontinuance in accordance with the facts found only when there is no specific provision requiring VA to assign the effective date on some other basis. This interpretation is consistent with general rules of statutory interpretation (*i.e.*, that a specific rule modifies a more general one) and decisions from the Court of Appeals for Veterans Claims on this subject.

Accordingly, we have retained the basic concepts from the introductory language to current § 3.500 and § 3.500(a), and modified them to

enhance the clarity of the current provisions. The first sentence of proposed § 5.705(a) restates the current language as follows: ''Except as otherwise provided, VA will assign an effective date for the reduction or discontinuance of disability compensation, pension, dependency and indemnity compensation (DIC), or the monetary allowances under chapter 18 of title 38, United States Code, in accordance with the facts found.''

The introductory text to current § 3.500 also states that ''[t]he effective date * * * will be the earliest of the dates stated in these paragraphs unless otherwise provided.'' Sections 3.501, 3.502, and 3.503(a) all provide that ''[t]he effective date * * * will be the earliest of the dates stated in this section.'' Current §§ 3.501 through 3.503 do not reference § 3.500. The wording in the current sections implies that each section exclusively provides the effective date of a reduction or discontinuance of benefits to the class of beneficiaries covered in the particular section. The language does not explicitly acknowledge that § 3.500 provides the default rule when none of the specific provisions in §§ 3.501 through 3.503 apply. The part 5 rule would be explicit in this regard.

Additionally, if a specific paragraph in § 3.500 applies and there is no applicable provision in §§ 3.501 through 3.503, then the specific paragraph in § 3.500 applies. For example, when a surviving spouse's right to receive benefits is discontinued based on his or her renouncement of the benefit, an event that is not covered under § 3.502, the effective date is assigned in accordance with § 3.500(q). For these reasons, VA applies § 3.500 in cases involving veterans, surviving spouses, parents and children, notwithstanding that §§ 3.501 through 3.504 appear to exclusively provide the effective dates of reductions and discontinuances applicable to those beneficiaries. Thus, the proposed part 5 rule clearly states the general applicability of § 5.705 but does not represent a substantive change in VA practice or policy.

The second sentence of proposed § 5.705(a) reads: ''If more than one effective-date provision applies to a particular issue or event, VA will reduce or discontinue the benefit(s) in accordance with the earliest applicable date.'' This language restates similar references to the ''earliest date,'' which appear in current §§ 3.500 through 3.503. The proposed language is easier to understand and apply, but it will not substantively alter VA's current interpretation of the governing statute or VA's regulations.

The introductory paragraphs to §§ 3.500 through 3.502 and § 3.503(a) identically state a general effective-date provision, ''Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.'' In the last sentence of proposed § 5.705(a) we propose to restate this provision as follows: ''VA will pay a reduced rate or discontinue benefits effective the date of reduction or discontinuance.'' Stating the effective date in this manner—focusing only on the date that the new rate begins rather than on the date that the old rate ends—clarifies the effective-date provisions for reductions and discontinuances. We propose similar wording throughout part 5. VA intends no substantive change by this rewording.

Under proposed § 5.705(a), as with the current rules, benefits are subject to reduction on the earliest applicable date. In view of that requirement, it would be useful to provide a reference tool in order to help VA and claimants locate the effective-date provisions throughout part 5. Proposed § 5.705(b) is reserved for a table with the locations of specific reduction and discontinuance rules once part 5 is published in the **Federal Register**. For the benefit of persons reviewing this NPRM, we have included a table to notify readers of the effective-date provisions that we intend to reference in the final version of this paragraph. We do not intend that proposed § 5.705(b) contain any substantive rules. In § 5.705(b), we make a statement to this effect, to prevent the reliance on this chart by claimants or adjudicators. When considering the issue of effective date, users of part 5 should apply the specific regulation referenced in the chart, rather than rely on the chart itself.

As proposed, the table shows both already published and as yet unpublished Part 5 sections. The unpublished sections are included as placeholders; many may change before publication. Section 5.101 of Subpart C was published as proposed on May 10, 2005. *See* 70 FR 24680. Proposed §§ 5.152, 5.165, and 5.177 of Subpart C were published as proposed on May 22, 2007. *See* 72 FR 28770. The Subpart D provisions were published as proposed on September 20, 2006. *See* 71 FR 55052. Section 5.477 of Subpart F was published as proposed on December 27, 2004. *See* 69 FR 77578. Sections 5.568 to 5.572 of Subpart G were published as proposed on October 1, 2004. *See* 69 FR 59072. A correction to proposed § 5.570 was published on October 21, 2004. *See* 69 FR 61914. Sections 5.524, 5.573, and 5.574 of Subpart G were published as proposed on October 21, 2005. *See* 70 FR 61326. The Subpart H provisions were published as proposed on March 9, 2007. *See* 72 FR 10860. The Subpart I provisions were published as proposed on June 30, 2006. *See* 71 FR 37790. The Subpart K provisions were published as proposed on May 31, 2006. *See* 71 FR 31056.

5.706 Payments Excluded in Calculating Income or Net Worth

Proposed § 5.706 contains a list of payments that are excluded by VA in calculating income or net worth for those benefits that are based on financial need, which are: Improved Pension, Section 306 Pension, Old-Law Pension, and parents' dependency and indemnity compensation (DIC). Financial need is also the basis for establishing dependency of parents in veterans' disability compensation cases. The specific rules related to income and net worth limits for these five benefits are located in the subpart dealing with each specific benefit. However, there are certain payments that are excluded from income and net worth by Federal statute for all Federal need-based programs. Proposed § 5.706 contains a list of these payments. It will be helpful to consolidate all of these exclusions into one location and in table form.

Current § 3.261 contains a table listing the exclusions from countable income for Old-Law Pension, Section 306 Pension, parents' DIC, and dependency of parents. Current § 3.263 contains exclusions from net worth for Section 306 Pension and dependency of parents. Current § 3.272 contains exclusions from countable income for Improved Pension, and current § 3.275 contains exclusions from net worth for Improved Pension. Exclusions common to each VA need-based benefit are included in table form in proposed § 5.706(b). The exclusions that are not common to each VA need-based benefit are contained in the regulations pertaining to the individual benefit. In addition, we propose to include in this table certain statutory exclusions from countable income or net worth that are not included in part 3.

Proposed § 5.706(b)(1) would exclude, from countable income, relocation payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), Pub. L. 91–646, 84 Stat. 1894. Current § 3.261(a)(32) excludes relocation payments under Public Law No. 90–448 and Public Law No. 90–495. However, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 repealed these relocation payment

provisions and exclusions. Section 216 of the 1970 Act provides that payments made under the Act are to be excluded from countable income. *See* 42 U.S.C. 4636.

Proposed § 5.706(b)(4) excludes from countable income and net worth consideration, payments made to individuals because of their status under Pub. L. 103–286, as victims of Nazi persecution. The exclusion of this source of income will implement this statute, which is not implemented by a part 3 regulation.

Proposed § 5.706(b)(7) excludes certain appropriations to comply with judgments of the Indian Claims Commission and the Court of Federal Claims that are held under the Indian Judgment Funds Use and Distributions Act (25 U.S.C. 1401 et seq.) or another act of Congress.

Proposed § 5.706(b)(8) excludes from income and net worth consideration the interests of individual Indians in trust or restricted lands. The current regulations under §§ 3.262(v) and 3.272(r) only exclude income of up to $2,000 per calendar year received by American Indian beneficiaries from trust or restricted lands. Pursuant to 25 U.S.C. 1408, interests of individual Indians in trust or restricted lands shall not be considered a resource, and up to $2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income. Therefore, in order to extend the exclusion to net worth consideration, proposed § 5.706(b)(8) would exclude from net worth the interests received by individual Indians from trust or restricted lands.

Proposed § 5.706(b)(9) excludes from income and net worth consideration income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes in accordance with 25 U.S.C. 459. Proposed § 5.706(b)(10) excludes from income and net worth consideration up to $2,000 of per capita distributions under the Old Age Assistance Claims Settlement Act (25 U.S.C. 2301 et seq.). The exclusions described in § 5.706(b)(9) and § 5.706(b)(10) will implement statutory provisions which were not implemented in part 3.

Proposed § 5.706(b)(11) excludes from income and net worth consideration, any income or asset received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626). Current §§ 3.262(x) and 3.272(t) exclude the following payments from income consideration: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. The Alaska Native Claims Settlement Act (43 U.S.C. 1626) provides that the income or asset received from a Native Corporation shall not be considered or taken into account as an asset or resource. Therefore, in order to extend the exclusion to net worth consideration, proposed § 5.706(b)(11) would exclude from net worth the cited income and assets listed in this paragraph.

Proposed § 5.706(b)(12) excludes from income and net worth consideration payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721 et seq.). The exclusion of this source of income will implement this statute not implemented in part 3.

Proposed § 5.706(b)(13) excludes from income consideration allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931), which provides that allowances, earnings, and payments to individuals participating in programs under the Act shall not be considered as income for the purposes of determining eligibility for, and the amount of income transfer and in-kind aid furnished under, any Federal or federally assisted program based on need. There is no resource exemption. Therefore, proposed § 5.706(b)(13) would only exclude from income consideration income derived from the Workforce Investment Act of 1998. The exclusion of this source of income will implement this statute not implemented in part 3.

Proposed § 5.706(b)(14) excludes from income consideration allowances, earnings, and payments to AmeriCorps participants. Pursuant to 42 U.S.C. 12637, allowances, earnings, and payments to individuals participating in programs under subchapter I of title 42 shall not be considered as income for the purposes of determining eligibility for, and the amount of income transfer and in-kind aid furnished under, any Federal or federally assisted program based on need. There is no resource exemption. Therefore, proposed § 5.706(b)(14) would only exclude from income consideration income derived from the National and Community Service Act of 1990. The exclusion of this source of income will implement this statute, which is not implemented in part 3.

Current § 3.262(q) and § 3.272(k) list excludable income from various Federal volunteer programs without reference to net worth consideration. Through a series of legislative changes, these programs are now administered by the Corporation for National and Community Service rather than by the agencies listed in § 3.262(q) and § 3.272(k). *See* Pub. L. 103–82, 107 Stat. 785. Section 5044(f) of title 42, United States Code, provides that payments made under the act which created the Corporation for National and Community Service, with certain exceptions, do not reduce or eliminate assistance that volunteers may be receiving under other programs. We propose to account for this change in the law by providing, in § 5.706(b)(15), that payments received from any of the volunteer programs administered by the Corporation for National and Community Service would be excluded from income and net worth.

Proposed § 5.706(b)(16) excludes from income and net worth consideration the value of the allotment provided to an eligible household under the Food Stamp Program. Proposed § 5.706(b)(17) excludes from income and net worth consideration the value of free or reduced price for food under the Child Nutrition Act of 1966 (42 U.S.C. chapter 13A). Proposed § 5.706(b)(18) excludes from income and net worth consideration the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. chapter 105). Proposed § 5.706(b)(19) excludes from income and net worth consideration the value of services, but not wages, provided to a resident of an eligible housing project under a congregate services program under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. chapter 130). Finally, proposed § 5.706(b)(20) excludes from income and net worth consideration the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. chapter 94). The exclusion of the five sources of income will implement these statutes not implemented in part 3.

Proposed § 5.706(b)(21) excludes from income consideration payments, other than wages or salaries, received from programs funded under the Older Americans Act of 1965 (42 U.S.C. chapter 35). In accordance with 42 U.S.C. 3020a(b), such payments may not

be treated as income or benefits for the purpose of any other program or provision of Federal or State law. The exclusion of this source of income will implement this statute not implemented in part 3.

Proposed § 5.706(b)(22) excludes from income and net worth consideration, amounts of student financial assistance received under Title IV of the Higher Education Act of 1965, including Federal work-study programs, under Bureau of Indian Affairs student assistance programs, or vocational training under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. chapter 44). The exclusion of this source of income will implement this statute, which is not implemented in part 3.

Proposed § 5.706(b)(24) excludes from income and net worth consideration, payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card (42 U.S.C. 1395w–141(g)(6)).

5.707 Deductible Medical Expenses

Proposed § 5.707, based on current §§ 3.261(b)(1), 3.262(l), and 3.272(g), pertains to medical expenses that are deducted from countable annual income. In § 5.707, we propose to define the categories of expenses that will be considered ''medical expenses.''

Paragraph (a) of proposed § 5.707 cites several other proposed rules that were published in prior Notices of Proposed Rulemaking: § 5.413 Income deductions for calculating adjusted annual income (regarding Improved Pension), 72 FR 54776, 54797–98 (Sept. 26, 2007), § 5.474 Deductible Expenses for Section 306 Pension Only, 69 FR 77578, 77591–92 (Dec. 27, 2004), and § 5.532 Deductions from income (regarding parents' DIC), 70 FR 61326, 61345 (Oct. 21, 2005).

Proposed § 5.707(b) defines the term ''licensed healthcare provider.'' We propose to inform regulation users that individual states are responsible for such licensing. We also propose to list examples of licensed healthcare providers.

For Improved Pension, the authority for VA to deduct from countable annual income a portion of amounts paid for unreimbursed medical expenses derives from 38 U.S.C. 1503(a)(8). For parents' dependency and indemnity compensation (DIC), the authority for VA to deduct unusual medical expenses from countable annual income derives from 38 U.S.C. 1315(f)(3). For Section 306 Pension, such authority derives from section 306 of Pub. L. 95–588, 92 Stat. 2508, which provides that beneficiaries who do not wish to elect Improved Pension may continue to receive the pension amount they were receiving on December 31, 1978, subject to certain applicable laws that existed on that date. The applicable law pertaining to medical expenses on that date was 38 U.S.C. 503(c) as in effect on December 31, 1978. (Section 503 was later renumbered section 1503). VA has identified specific types of expenses that will be considered deductible ''medical expenses,'' because that term is not defined by statute. We propose to group these specific types of expenses into broad categories, as listed in paragraph (c) of the proposed rule.

Proposed § 5.707(c) explains that the term ''medical expenses'' includes payments made for care by a licensed healthcare provider, medical supplies and medications, adaptive equipment, transportation, health insurance premiums, and institutional forms of care and in-home attendants. We propose to include in paragraph (c) detailed provisions relating to the broad categories of medical expenses. Proposed § 5.707(c)(2) will state that vitamins will be deducted as a medical expense only if the individual is directed by a ''healthcare provider authorized to write prescriptions'' to take the vitamins. These clarifications provide further guidance as to allowable medical expenses.

Proposed § 5.707(c)(6) includes details relating to medical expenses paid for different forms of institutional care. Institutions such as nursing homes, custodial institutions, soldiers' and sailors' homes, or veterans' homes often provide a range of ''services,'' which may include healthcare. In such settings, VA wishes to ensure that deductions from countable annual income reflect Congress' intent that amounts be deducted for ''medical expenses'' only, and not for other primary or incidental services. For example, if fees are paid to an institution that houses and maintains an individual because the individual needs to live in a protected environment (*see* proposed paragraph (c)(6)(iv), ''Custodial Care''), the portion of the fees paid for medical treatment will be deducted from countable annual income. However, the portion of the fees paid for strictly custodial care will not be deducted. Similarly, VA may deduct fees paid to a nursing home if the individual is there as a ''patient'' and not merely as a ''resident.'' Individuals in veterans' homes or soldiers' and sailors' homes may have expenses deducted if they are actually receiving medical care, but expenses will not be deducted merely for domiciliary functions performed by the homes.

5.708 Eligibility Verification Reports

Proposed § 5.708 combines provisions from current §§ 3.256, 3.277, and 3.661 with a few substantive changes. The proposed regulation includes rules regarding when VA will require claimants and beneficiaries to complete an eligibility verification report (EVR).

Proposed § 5.708(a)(1) would define an EVR. The current regulations, §§ 3.256(b) and 3.277(c) require the use of an EVR in certain circumstances, such as to obtain a social security number or to obtain certain information from a beneficiary receiving parents' dependency and indemnity compensation (DIC) or pension. Requiring an EVR under these circumstances is unnecessarily restrictive and burdensome to both VA personnel and the beneficiary who must file the EVR. In some cases, verifying a social security number can be achieved by sending a simple form letter or by making a direct telephone call to the individual. Hence, an EVR is defined as a ''form that VA may use to obtain'' certain information, rather than as a ''form that VA shall use to obtain'' that information.

Current § 3.661(b)(2) uses the term, ''12-month annualization period'' to describe the reporting period for which a beneficiary reports income, adjustments to income, and net worth to VA. We propose to use the term ''reporting period'' instead of ''12-month annualization period,'' for ease of use by claimants, beneficiaries, VA claims examiners, and other interested parties. We therefore propose in paragraph (a) to include a definition of ''reporting period'' and to use that term in § 5.708 and § 5.697.

In order to provide flexibility to VA personnel, we propose to use in § 5.708(b) the word ''may'' in place of the word ''shall,'' which will give VA the option of not using an EVR to obtain some types of information. In addition, we would make this new, permissive rule applicable to both claimants and beneficiaries, in order to improve VA's ability to process both claims and ongoing awards, by incorporating into § 5.708(b)(1), long-standing VA practice regarding when to send an EVR. Therefore, proposed paragraph (b) provides the circumstances under which EVRs ''may'' be sent to beneficiaries and claimants.

Proposed § 5.708(c) includes an important exception regarding sending an annual EVR to certain parents' DIC beneficiaries. Specifically, 38 U.S.C. 1315(e) states that when a parent has

reached the age of 72 and has been receiving parents' DIC during 2 consecutive calendar years, the parent will not be required to annually report their income by filing an EVR. However, § 1315(e) does require that a parent receiving parents' DIC notify VA whenever there is a material change in his or her annual income and we have incorporated this requirement in paragraph (c). The text in paragraph (c) of proposed § 5.708(c) is an exception to the general rule stated in paragraph (b) and we have pointed that out in the introductory paragraph of (b).

Proposed § 5.708(d) specifies actions VA may take upon receipt of information or an EVR. Current part 3 provisions contain an explanation of the actions VA takes upon receipt of an EVR from a beneficiary. Missing, however, is an explanation of the action VA takes when an EVR is received from a claimant. This explanation is necessary to completely address actions VA will take regarding EVRs received from claimants and beneficiaries. In addition, because paragraph (b) of this rule would make the use of an EVR optional, paragraph (d) states the action VA may take upon receipt of either an EVR or information from a claimant or a beneficiary.

Proposed § 5.708(d) also describes generally the action VA takes when the expected annual income is uncertain. This provision is based on current § 3.661(a)(2). We have updated the citations to §§ 3.260(b) and 3.271(f), contained in current § 3.661(a)(2), to the proposed part 5 counterparts. *See* 69 FR 77578, 77593 (Dec. 27, 2004) (proposed § 5.478(a)); 70 FR 61326, 61345 (Oct. 21, 2005) (proposed § 5.531(e); 72 FR 54776, 54801 (Sept. 26, 2007) (proposed § 5.423).

Proposed § 5.708(f) provides for the action VA will take when a beneficiary does not return a completed EVR in a timely manner. We are proposing to incorporate a long-standing VA practice which is helpful to beneficiaries in proposed § 5.708(f)(2). VA's practice is that when a beneficiary submits an incomplete EVR within 60 days after the date VA requested the EVR, VA will notify the beneficiary that the EVR is incomplete and inform him or her of the additional information needed to complete it. If VA does not receive a completed EVR within 120 days after the date VA first requested the EVR from the beneficiary, VA will immediately suspend further benefit payments.

Current § 3.661(b)(2)(i) was once applicable when VA used the ''annualization period'' as the period for which income is reported by the beneficiary. VA is now using the 12-month calendar year as its annual reporting period. Section 5.708(f)(3) is a plain language rewrite of the applicable provision of current § 3.661(b)(2)(i) to reflect the change in the annual reporting period. VA intends no substantive change by this rewording.

Current § 3.661(b)(2)(iii) allows VA to resume the payment of benefits from the date they were stopped (because a beneficiary failed to return an EVR) if VA receives information requested in the EVR within 1 year after the end of the 12-month period for which the beneficiary had been asked to provide the EVR. Current § 3.661(b)(2)(ii), titled ''Adjustment of overpayment,'' however, reads:

> If evidence of entitlement to improved pension or DIC for any period for which payment of improved pension or DIC was discontinued for failure to file an [EVR] is received at any time, payment of improved pension or DIC shall be awarded for the period of entitlement for which benefits were discontinued for failure to file an [EVR].

This paragraph means that if information requested in an EVR is provided by a beneficiary more than 1 year after the end of the 12-month period for which VA requested the EVR, retroactive payments may be paid only for the purpose of reducing or eliminating any overpayment created as a result of loss of entitlement during that same EVR reporting period. In other words, current § 3.661(b)(2)(ii) limits the payment of retroactive benefits to the amount of the overpayment created as a result of the failure to return an EVR if VA does not receive the EVR timely. We propose to clarify the current language in proposed § 5.708(h).

Finally, we propose not to include current §§ 3.256(b)(2) and 3.661(b)(1) in part 5. The current sections permit VA to require that beneficiaries receiving Old-Law Pension and Section 306 Pension complete an EVR and provide the effective date for discontinuance of those benefits for failure to return a completed EVR. However, eligibility for these two programs is limited to individuals who have been continuously entitled to receive benefits under one of these programs from the dates they were superseded until the present. The last date eligibility could be established for Old-Law Pension was June 30, 1960, and the last date eligibility could be established for Section 306 Pension was December 31, 1978. The majority of individuals entitled to receive benefits under these two programs are advanced in age, and their population is rapidly declining; currently, fewer than 100,000 such beneficiaries exist. For these reasons, VA no longer requests EVRs from individuals receiving benefits under these two pension programs.

5.709 Claimant and Beneficiary Responsibility To Report Changes

Proposed § 5.709 is a combination of some of the provisions in §§ 3.256, 3.277, and 3.660. Proposed paragraph (a) restates concepts from current §§ 3.256(a), 3.277(a) and (b), and 3.660(a)(1), which require that pension or parents' DIC claimants or beneficiaries promptly notify VA of changes in the factors that affect entitlement to those benefits. Both § 3.256(a) and § 3.277(a) and (b) require a claimant or beneficiary to ''promptly notify'' VA of changes, while § 3.660(a)(1) requires a beneficiary to provide notification ''when the recipient acquires knowledge that he or she will begin to receive additional income or when his or her marital or dependency status changes.'' Although worded differently, all three provisions contain comparable notification requirements, which are intended to mean that a claimant or beneficiary must promptly notify VA when that person becomes aware of changes in the factors that affect entitlement. Therefore, proposed § 5.709(a) requires that claimants and beneficiaries ''promptly notify VA of any material change'' that would affect entitlement to pension or parents' DIC.

Current § 3.277(a) gives VA authority to require ''information, proofs, and evidence'' from an individual as needed to ''determine the annual income and the value of the corpus of the estate of'' a pension claimant or beneficiary. We include this authority in proposed § 5.709(a) too. However, proposed § 5.709(a) does not include the word ''proofs.'' We note that the word ''proofs'' is antiquated and may confuse some regulation users. We therefore propose to omit the word ''proofs'' from the phrase and use ''information and evidence'' in proposed § 5.709(a).

Proposed § 5.709(b) sets forth the factors affecting entitlement to pension and parents' DIC which change most frequently. In keeping with our goal of rewriting and reorganizing part 3 regulations in a user-friendly format, it would be helpful to consolidate all of these factors into a reference table. Proposed § 5.709(b) includes this table along with a few clarifications of some of the provisions in current §§ 3.256 and 3.277. We do not intend that proposed § 5.709(b) confer any substantive rights.

The first clarification concerns current §§ 3.256(a)(4) and 3.277(b)(4). The current paragraphs provide that claimants and beneficiaries must notify VA of changes in ''[n]ursing home

patient status.'' However, the notification requirement only applies to veterans and surviving spouses claiming or receiving pension and parents claiming or receiving parents' DIC. The table in proposed § 5.709(b) would indicate that nursing home status is a factor affecting entitlement to pension for veterans and surviving spouses and DIC for parents.

Second, current § 3.660(a)(1) requires that a veteran, surviving spouse, or child receiving pension, or a parent receiving death compensation or parents' DIC, must notify VA ''of any * * * dependency status changes.'' This may lead some readers to erroneously conclude that a veteran's parent or a surviving child must report changes in the number of children he or she has. However, the number of children a claimant or beneficiary has is a factor that affects entitlement only when the claimant or beneficiary is a veteran or surviving spouse. Proposed § 5.709(b) makes this clear.

Section 5.220, cited in proposed § 5.709(b), was published as proposed on September 20, 2006. *See* 71 FR 55052, 55069. Section 5.411(b), also cited in proposed § 5.709(b), was published as proposed on September 26, 2007. *See* 72 FR 54776, 54796. Section 5.473, also cited in proposed § 5.709(b), was published as proposed on December 27, 2004. *See* 69 FR 77578, 77591.

5.710 Adjustment in Benefits Due to Reduction or Discontinuance of a Benefit to Another Payee

Proposed § 5.710 is a plain language rewrite of current § 3.651 and provides rules for adjustments to a beneficiary's payments when a benefit to another payee is reduced or discontinued. VA intends no substantive change by this rewording.

5.711 Payment to Dependents Due to the Disappearance of a Veteran for 90 Days or More

Proposed § 5.711 is based on current § 3.656 and provides that when a veteran disappears for 90 days or more, benefits may be paid to the veteran's dependents.

Current § 3.656 refers to payment ''to or for'' a veteran's dependents. We propose to omit the ''or for'' qualifier in § 5.711. A number of regulations in current part 3 refer to payment of various VA benefits ''to or for'' a veteran, a child, or a surviving spouse. This language as used in current § 3.656 is used to indicate that a payment may be made directly to a beneficiary or to a fiduciary for that beneficiary. A typical example of the latter would be payment to a child's parent or guardian as the fiduciary of a VA beneficiary who is a minor. Another example would be payment to a VA-appointed fiduciary on behalf of an incompetent beneficiary. However, we note that although VA disability compensation and pension benefits are always potentially payable to a fiduciary for a VA beneficiary when the conditions warrant, the ''to or for'' phrase may be confusing to some regulation users. Further, inasmuch as benefits are always potentially payable to a fiduciary for a beneficiary, it is not necessary to state that explicitly in every regulation. Therefore, we have omitted the ''or for'' qualifier in proposed § 5.711. Interested persons may find rules relating to payment through fiduciaries in 38 CFR part 13, and that topic will also be addressed in subpart M of proposed part 5. We intend no substantive change by omission of the ''or for'' language.

In addition, current § 3.656(a) uses the word ''parents.'' This word has the potential to confuse readers because a parent must first be established as a dependent of a veteran who was in receipt of disability compensation at the time of the veteran's disappearance in order to be considered for benefits as a dependent parent. Under 38 U.S.C. 1158, where a veteran receiving disability compensation disappears, VA may pay the compensation otherwise payable to the veteran, to the veteran's ''parents.'' The amount of such payments may not exceed the amount payable to the parents if the veteran had died from a service-connected disability. Because only dependent parents are eligible for parents' DIC benefits, no benefits would be payable to a non-dependent parent under § 1158. Therefore, we are proposing to use the term ''dependent parents'' instead of ''parents'' in proposed § 5.711(b).

We also propose to replace the language ''date of last payment'' (used in current § 3.656(a) and other part 3 sections) throughout this rulemaking with ''the first day of the month after the month for which VA last paid benefits,'' which is clearer and more specific. No substantive change is intended by this change.

Current § 3.656(a) states that if a veteran is missing for 90 days or more, VA will pay the veteran's dependents the lesser of the DIC which would be payable if the veteran had died from a service-connected cause or the amount of disability compensation when the veteran disappeared. In proposed § 5.711(b)(1) we clarify how VA distributes such payments: if VA pays DIC pursuant to this paragraph, then it will pay benefits to the dependents as if the veteran were deceased, and if VA pays disability compensation pursuant to this paragraph, then it will pay benefits in equal amounts to the dependents. These payment methods are fair to dependents and are simple for VA to administer.

Current § 3.656(b) states that if a missing veteran's whereabouts become known VA will discontinue the award to the dependents and ''appropriate action will be taken to adjust the veteran's award in accordance with the facts found.'' We have not included this quoted material in proposed § 5.711 because this section pertains to payments made to dependents of missing veterans. Proposed § 5.712, which pertains to payments made to veterans who are missing and later found, includes this material.

Current § 3.656(d) references Improved Pension, Section 306 Pension, and Service Pension. Service Pension is the name for Spanish American War Pension. See 38 CFR 3.1(x). There are no Spanish American War veterans still living, so it would be inappropriate to include the term ''Service Pension'' in proposed § 5.711(c)(1).

Section 5.502, cited in proposed § 5.711(d), was published as proposed on October 21, 2005. *See* 70 FR 61326, 61341.

5.712 Suspension of VA Benefits Due to the Disappearance of a Payee

Proposed § 5.712 concerns the suspension and resumption of benefits for a payee whose whereabouts are or were unknown. Proposed § 5.712(a) states VA's long-standing practice to suspend benefit payments when a payee's whereabouts are unknown. If the payee is ultimately located, VA pays the suspended benefits to him or her, so the payee is not deprived of any payments. Title 38, United States Code, requires VA to pay benefits to those who are entitled. Ensuring that benefit payments are received by the payee is an inherent part of that duty.

Current § 3.158(c) provides for resumption of payments if the payee's whereabouts become known. This concept has been restated in plain language in proposed § 5.712(b). VA intends no substantive change by this rewording.

The last sentence of proposed § 5.712(b) states, ''Retroactive payments under this paragraph (b) will be reduced by the amount of any payments made to a veteran's dependents under § 5.711.'' During the period of suspension, 38 U.S.C. 1158 and 1507 (the statutory authorities for § 5.711) authorize VA to reallocate disability compensation or pension to the veteran's dependents.

The benefits paid under § 5.711 are those benefits that would be otherwise payable to the veteran if not for his or her disappearance. Therefore, when a veteran's whereabouts become known and his or her benefits are restored, VA will not pay the veteran benefits that have already been paid to dependents. This rule is not explicitly stated in part 3 but we have included it in § 5.712(b).

5.713 Restriction on VA Benefit Payments to an Alien Located in Enemy Territory

Current § 3.653 describes two different types of restrictions on the payment of VA benefits to persons located in foreign countries. Provisions relating to these restrictions are included in proposed §§ 5.713 (the withholding of benefits to an alien located in enemy territory) and 5.714 (the withholding of checks sent to foreign countries specifically listed by the Department of the Treasury). Provisions regarding claims for undelivered or discontinued benefits affected by these restrictions are stated in proposed § 5.715.

Proposed § 5.713 addresses the first restriction and would implement 38 U.S.C. 5308, ''Withholding benefits of persons in territory of the enemy.'' Proposed § 5.713(b), which is based on current § 3.653(a), permits payment to an alien's dependents of the benefits discontinued under this section. A change from the current section would include language that more closely follows 38 U.S.C. 5308(c). Specifically, proposed paragraph (b)(1) provides that VA may apportion and pay all or any part of the alien's benefits to his or her dependents, up to the amount the dependents would receive if the alien were dead.

Proposed § 5.713(b) also regulates the reduction or discontinuation of payments to the alien's dependents. Because VA will often have no way of knowing when an alien leaves enemy territory, and to avoid creation of unnecessary overpayments, payments to dependents will be discontinued effective as of the date VA receives notice that the alien is no longer located in enemy territory or under enemy control. In addition, proposed § 5.713(b) provides that benefit payments to the alien's dependents will be reduced or discontinued, as required by law, upon the death of the alien or dependent, upon reduction or discontinuance of the alien's benefits, or cessation of dependent status.

Current § 3.653(a) is limited to compensation, pension and DIC. However, we note that under 38 U.S.C. 5308(a), the rule applies to any award of ''gratuitous benefits under the laws administered by the Secretary.''

Paragraph 7 of VAOPGCPREC 06–91, 56 FR 25156 (June 3, 1991), states that:

> 7. Interim Issue (CONTR–169), dated January 13, 1960, providing necessary instructions for the fiscal implementation of Pub. L. 86–146, provides in paragraph D.3 in pertinent part:
>
> ''a. Immediately upon death of a veteran who has been adjudged or rated incompetent, the balance in the Personal Funds of Patients account will be analyzed to determine the source thereof, *i.e.,* funds *derived* from gratuitous benefits *deposited by the VA* under laws administered by the VA or from other sources. *For this purpose gratuitous benefits are defined as all benefit payments under laws administered by the VA except insurance payments (Servicemen's Indemnity benefits are not insurance payments).''*

Therefore, we propose in § 5.713(a) to make this section applicable to ''all VA benefits except insurance payments.''

Finally, we propose to not include current §§ 3.400(l) and 3.500(j) in part 5. These paragraphs are merely cross-references to award, reduction, or discontinuance effective-date provisions that are included in proposed § 5.713. Cross-references are not necessary.

5.714 Restriction on Delivery of VA Benefit Payments to Payees Located in Countries on Treasury Department List

Proposed § 5.714 addresses restrictions on payments to individuals located in countries listed by the Department of the Treasury. This regulation implements 31 U.S.C. 3329, ''Withholding checks to be sent to foreign countries,'' and 31 U.S.C. 3330, ''Payment of Department of Veterans Affairs checks for the benefit of individuals in foreign countries.'' The first statute, 31 U.S.C. 3329, requires that the Secretary of the Treasury prohibit sending a Federal payment to a foreign country when the Secretary decides that there is no reasonable assurance the intended recipient of the payment will receive it and be able to negotiate it for its full value. The second statute, 31 U.S.C. 3330, provides special rules for applying 31 U.S.C. 3329 to VA benefits. The specific countries subject to the prohibition are listed in 31 CFR 211.1, ''Withholding delivery of checks.'' We propose to refer readers to 31 CFR 211.1, rather than list the affected countries, because the list is subject to change by the Department of the Treasury.

Proposed § 5.714(a) defines the following terms used in this section and elsewhere in part 5: ''Payee,'' ''special deposit account'' (the special account referenced in 31 U.S.C. 3329), and ''Treasury Department list'' (the list of countries in 31 CFR 211.1). Although these definitions are new, they reflect current VA practices contemplated by part 3 of title 38, CFR.

Current § 3.653(c) is limited to ''aliens residing in'' a country on the Treasury Department list; however, we note that 38 U.S.C. 3329 and 3330 are not limited to aliens and are based on delivery to a country, not residency in a country. Therefore, in proposed § 5.714(c), we apply the restriction on check delivery to a ''payee located in a country on the Treasury Department list.''

Further, section 3330(a) of title 31, United States Code, prohibits VA from sending checks ''if the check is * * * to be sent to a person in the United States or a territory or possession of the United States, and the person is legally responsible for the care of an individual in a foreign country.'' Although broadly written, this provision is not intended to bar VA benefit payments to anyone in the U.S. who is legally responsible for any person located in a foreign country. Rather, its intended effect is only to bar payment to a person in the U.S. or its territories or possessions on behalf of a VA beneficiary located in a country on the Treasury Department list. We propose to make that clear in proposed § 5.714(c).

Section 3329 of title 31, United States Code, prohibits sending VA checks to countries on the Treasury Department list. Neither the statute, nor its implementing regulation, 31 CFR 211.1, precludes a payee located in such countries from taking delivery outside of that country. It is VA's practice to permit delivery of checks to a U.S. Foreign Service post in a country that is not on the Treasury Department list, if requested by a payee. We propose to include this provision in § 5.714(d). VA intends no substantive change, inasmuch as this method of delivery is mentioned in current § 3.653(c)(1) and (2).

5.715 Claims for Undelivered or Discontinued Benefits

Proposed § 5.715 explains how to claim benefits discontinued under proposed § 5.713. It also explains how to claim benefits that could not be delivered because of the restrictions in proposed § 5.714. Proposed § 5.715(a) cross-references the definitions of ''payee,'' ''special deposit account,'' and ''Treasury Department list'' in § 5.714(a).

Proposed § 5.715(b)(2) states that there is no time limit for filing claims under this section. This provision is based on current § 3.653(c)(3) with one change involving time limits for filing claims for discontinued or withheld benefits. The current regulation states

that there is no time limit with respect to claims for benefits withheld from a person located in a country on the Treasury Department list. There is also no time limit with respect to claims for benefit payments to an alien whose benefits were discontinued. We have included general language in proposed § 5.715(b)(2) in order to make clear that there is no time limit for claims filed for benefits discontinued under § 5.713 or withheld under § 5.714.

Proposed § 5.715 is based on 38 U.S.C. 5308(b). Section 5308(b) requires that a new claim by an alien whose benefits were discontinued under section 5308 be ''accompanied by evidence satisfactory to the Secretary showing that such alien was not guilty of mutiny, treason, sabotage, or rendering assistance to the enemy.'' Section 3329(c)(1) of title 31 in essence provides that before the Secretary of the Treasury can pay out VA benefit funds in the special deposit account, the person claiming payment must satisfy VA of his or her right to the withheld funds. We propose to address these concerns by providing in § 5.715(d) that VA may request any evidence necessary to support a claim under this section. This includes evidence that the payee has not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy and evidence of continued entitlement to benefits during the time that awarded benefits were discontinued or benefit payments were undelivered.

Section 5.677, cited in proposed § 5.715(c), was published as proposed on May 31, 2006. *See* 71 FR 31056, 31065–66. Section 5.90, cited in proposed § 5.715(d), will restate the content of current § 3.159. Space was reserved in part 5 in a prior Notice of Proposed Rulemaking. *See* 70 FR 24680, 24683 (May 10, 2005); *see also* 73 FR 23353 (April 30, 2008) (amending 38 CFR 3.159). Section 5.565, cited in proposed § 5.715(f), was published as proposed on October 1, 2004. *See* 69 FR 59072, 59088–89.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information, at 38 CFR 5.708 and 5.709, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for §§ 5.708 and 5.709 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0101.

Regulatory Flexibility Act

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

Executive Order 12866

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

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adaptive Housing for Disabled Veterans; 64.109, Veterans Compensation for Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: August 19, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR Part 5, as proposed to be added at 69 FR 4832, January 30, 2004, and as amended, by adding subpart L as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart L—Payments and Adjustments to Payments

General Rate-Setting and Payments

Sec.

5.690 Where to find benefit rates and income limits.
5.691 Adjustments for fractions of dollars.
5.692 Fractions of one cent not paid.
5.693 Beginning date for certain VA benefit payments.
5.694 Surviving spouse's benefit for the month of the veteran's death.

5.695 Payments to or for a child pursuing a course of instruction at an approved educational institution.
5.696 Awards of dependency and indemnity compensation when not all dependents apply.
5.697 Exchange rates for income received or expenses paid in foreign currencies.
5.698—5.704 [Reserved]

General Reductions, Discontinuances, and Resumptions

5.705 General effective dates for reduction or discontinuance of benefits.
5.706 Payments excluded in calculating income or net worth.
5.707 Deductible medical expenses.
5.708 Eligibility verification reports.
5.709 Claimant and beneficiary responsibility to report changes.
5.710 Adjustment in benefits due to reduction or discontinuance of a benefit to another payee.
5.711 Payment to dependents due to the disappearance of a veteran for 90 days or more.
5.712 Suspension of VA benefits due to the disappearance of a payee.
5.713 Restriction on VA benefit payments to an alien located in enemy territory.
5.714 Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list.
5.715 Claims for undelivered or discontinued benefits.
5.716–5.739 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart L—Payments and Adjustments to Payments

General Rate-Setting and Payments

§ 5.690 Where to find benefit rates and income limits.

The rates of disability compensation, dependency and indemnity compensation, Old-Law Pension, Section 306 Pension, Improved Pension, and monthly allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects, as well as the income limits applicable to Old-Law Pension, Section 306 Pension, Improved Pension, and parents' dependency and indemnity compensation, are available on VA's public Web site at *http://www.va.gov.*

(Authority: 38 U.S.C. 501(a))

§ 5.691 Adjustments for fractions of dollars.

(a) *Calculation of adjusted annual income.* For purposes of entitlement to pension, VA will round down to the nearest dollar when calculating the adjusted annual income. See § 5.370 for the definition of adjusted annual income. For purposes of entitlement to parents' dependency and indemnity compensation (DIC), VA will round down to the nearest dollar when calculating the annual income. See §§ 5.531 through 5.534 for how to calculate parents' DIC annual income.

(Authority: 38 U.S.C. 1503(b))

(b) *Calculation of increased rates and income limits.* VA will round up to the nearest dollar when calculating the increase due to a cost-of-living adjustment of any of the following amounts:

(1) Improved Pension maximum annual pension rates;

(2) Old-Law Pension and Section 306 Pension annual income limits;

(3) Income of a spouse when excluded from a veteran's countable annual income for Old-Law Pension and Section 306 Pension purposes;

(4) Parents' DIC annual rates and income limits; or

(5) The monthly allowance rates under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects.

(Authority: 38 U.S.C. 5312(c))

(c) *Calculation of monthly or other pension rates.* VA will round down to the nearest dollar the amount of Improved Pension or Section 306 Pension payable.

(Authority: 38 U.S.C. 5123)

§ 5.692 Fractions of one cent not paid.

VA will not pay fractions of a cent when paying any benefit.

(Authority: 38 U.S.C. 501(a), 5312(c)(2))

§ 5.693 Beginning date for certain VA benefit payments.

(a) *Definition.* For purposes of this section, ''increased award'' means a benefit payment increased as a result of:

(1) An added dependent;

(2) An increase in disability or disability rating, including but not limited to a temporary increased rating;

(3) A reduction in income;

(4) An election of Improved Pension under § 5.461;

(5) Except as provided in paragraph (c)(6) of this section, a temporary total rating under § 4.29 of this chapter, ''Ratings for service-connected disabilities requiring hospital treatment or observation''; or

(6) A temporary total rating under § 4.30 of this chapter, ''Convalescent ratings.''

(b) *Beginning payment date rule.* Except as provided in paragraph (c) of this section, benefits identified in this paragraph will not be paid for any period before the first day of the month after the month in which the payment becomes effective. However, VA will consider beneficiaries to be in receipt of monetary benefits as of the effective date of the award. This paragraph applies to awards or increased awards of the following benefits made based on an original claim, reopened claim, or claim for increase:

(1) Disability compensation;

(2) Pension;

(3) Dependency and indemnity compensation (DIC); or

(4) The monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects.

(c) *Exceptions to beginning payment date rule.* The beginning payment date in paragraph (b) of this section does not apply to the following awards, which are payable as of the effective date:

(1) Awards that provide only for continuity of entitlement with no increase in the rate of payment.

(2) Awards restoring a previously reduced benefit because the circumstances requiring reduction no longer exist.

(3) Awards to a surviving spouse at the veteran's rate for the month of the veteran's death.

(4) Awards that change any withholding, reduction, or suspension by reason of:

(i) Recoupment;

(ii) An offset to collect indebtedness;

(iii) Hospitalization (Institutionalization);

(iv) Incompetency;

(v) Incarceration; or

(vi) Discontinuance of apportionment.

(5) Benefit increases resulting solely from the enactment of certain types of legislation, including:

(i) Cost-of-living increases for disability compensation and DIC for surviving spouses and children;

(ii) Increases in the maximum annual pension rate for Improved Pension;

(iii) Increases in the income limits and maximum monthly rate for parents' DIC;

(iv) Increases in the monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects; and

(v) Statutory changes in the criteria for the award of special monthly compensation.

(6) Awards based on temporary total ratings under § 4.29 of this chapter when the entire period of hospitalization or treatment, including any period of post-hospitalization convalescence, begins and ends within the same calendar month. In such cases the period of payment will begin on the first day of the month in which the hospitalization or treatment began.

(7) Apportionments of benefits.

(8) Certain awards of disability compensation to a veteran who is also

eligible for retired pay, as described in paragraph (d)(1) of this section.

(9) Awards to a veteran's dependent of benefits that the veteran was receiving or entitled to receive when the veteran disappeared for 90 days or more.

(d) *Cases involving waiver of retired pay.* (1) If the veteran's retired pay, as defined in § 5.745(a), is greater than the amount of VA disability compensation payable, VA will pay disability compensation from the effective date the veteran waives such retired pay.

(2) If the amount of VA disability compensation payable is greater than the veteran's retired pay, VA's payment of the difference for any period before the effective date of the veteran's waiver of such retired pay is subject to the beginning payment date rule described in paragraph (b) of this section.

(3) Nothing in this section prevents the veteran from receiving retired pay before the effective date of waiver of such pay.

(Authority: 38 U.S.C. 501(a), 1832, 5305, 5111)

§ 5.694 Surviving spouse's benefit for the month of the veteran's death.

(a) *Month-of-death benefit.* For purposes of this section, ''month-of-death benefit'' means a payment to a deceased veteran's surviving spouse for the month in which the veteran died and in the amount of disability compensation or pension that the veteran would have received for that month, if not for his or her death.

(b) *Surviving spouse entitled to death pension or dependency and indemnity compensation (DIC) for the month of death.* (1) If the surviving spouse is entitled to death pension or DIC for the month of the veteran's death in an amount greater than the amount of disability compensation or pension that the veteran would have received for that month but for his or her death, then the surviving spouse is not entitled to a month-of-death benefit.

(2) If the surviving spouse is entitled to death pension or DIC for the month of the veteran's death in an amount equal to or less than the amount of disability compensation or pension that the veteran would have received for that month but for his or her death, then the surviving spouse is entitled to death pension or DIC for the month of the veteran's death in an amount equal to the amount of disability compensation or pension that veteran would have received for that month but for his or her death.

(c) *Surviving spouse not entitled to death pension or DIC for the month of death.* If the veteran died after December 31, 1996, and the surviving spouse is not entitled to death pension or DIC for the month of the veteran's death, then the surviving spouse is entitled to the month-of-death benefit. If the veteran died before December 31, 1996, then such a surviving spouse is not entitled to the month-of-death benefit.

(d) *Payment issued to deceased veteran.* If VA issues payment to a deceased veteran for the month-of-death benefit, the payment will be treated as payable to a surviving spouse who is otherwise eligible for payment under paragraph (c) of this section. If the payment issued to a deceased veteran is negotiated or deposited by the surviving spouse, the payment will be considered the benefit to which the surviving spouse is entitled under paragraph (c) of this section. However, if such payment is less than the amount the surviving spouse would receive under paragraph (c) of this section, the unpaid difference may be paid as accrued benefits. See § 5.550 (defining accrued benefits).

(Authority: 38 U.S.C. 5111(c), 5310)

§ 5.695 Payments to or for a child pursuing a course of instruction at an approved educational institution.

(a) *Definition.* An ''approved educational institution'' means a permanent organization, approved by VA, that offers courses of instruction to a group of students who meet its enrollment criteria, including schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term ''home schools'' is limited to courses of instruction for grades kindergarten through 12.

(Authority: 38 U.S.C. 104(a))

(b) *Payment of Improved Pension or disability compensation.* Additional disability compensation will be paid to a veteran, or a higher rate of Improved Pension may be paid to a veteran or a surviving spouse, for a child of the veteran at least 18 years but less than 23 years old who is pursuing a course of instruction at an approved educational institution. If no surviving spouse is eligible to Improved Death Pension or such child of the veteran is not in the surviving spouse's custody, Improved Death Pension may be paid directly to such child. For the definition of custody see paragraph (a) of § 5.417 ''Child custody for purposes of determining dependency for Improved Pension.'' An award under this section will be effective on or after the child's 18th birthday.

(1) *Child began pursuing a course of instruction at an approved educational institution before reaching age 18.* If a child began pursuing a course of instruction at an approved educational institution on or before the child's 18th birthday and VA receives a claim on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, the effective date will be the child's 18th birthday.

(2) *Child began pursuing a course of instruction at an approved educational institution after reaching age 18.* If a child began pursuing a course of instruction at an approved educational institution after reaching age 18 and a claim is received no later than 1 year after the date the child began pursuing a course of instruction at an approved educational institution, the effective date will be the date the child began pursuing a course of instruction at an approved educational institution.

(c) *Payment of dependency and indemnity compensation (DIC) to a child not receiving DIC before reaching age 18.* If a child was not receiving DIC before reaching age 18, DIC will be paid directly to the child for periods beginning on or after the child's 18th birthday if the child is entitled to DIC and is pursuing a course of instruction at an approved educational institution. The effective date of the award of benefits will be as follows:

(1) *Child was pursuing a course of instruction at an approved educational institution upon reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution on or before the child's 18th birthday and a claim for DIC is received on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, the effective date will be the first day of the month in which the child turned 18.

(2) *Child began pursuing a course of instruction after reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution after reaching age 18 and a claim for DIC is received no later than 1 year after the date the child began pursuing a course of instruction at an approved educational institution, the effective date will be the first day of the month the child began pursuing a course of instruction at an approved educational institution.

(3) *Child established as a surviving spouse's dependent.* If immediately before a child's 18th birthday, the child was established as a dependent of a surviving spouse entitled to DIC, and

the child's claim for DIC is received on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, the effective date of the DIC to the child will be the child's 18th birthday.

(Authority: 38 U.S.C. 5110(e))

Cross Reference: For information on the impact on awards to other children, see § 5.573, ''Effective date for dependency and indemnity compensation rate adjustments when an additional survivor files an application.''

(d) *Payment of DIC to a child receiving DIC before reaching age 18.* If a child was receiving DIC in his or her own right before reaching age 18, payments may be made for periods beginning on or after the child's 18th birthday if the child is pursuing a course of instruction at an approved educational institution. Benefits will be payable directly to the child as follows:

(1) *Child began pursuing a course of instruction before reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution on or before the child's 18th birthday and evidence of school attendance is received on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, payments will be made from the child's 18th birthday.

(2) *Child began pursuing a course of instruction after reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution after reaching age 18 and evidence of school attendance at an approved educational institution is received no later than 1 year after the date the child began pursuing a course of instruction, payments will be made from the date the child began pursuing a course of instruction.

(Authority: 38 U.S.C. 5110(e))

Cross Reference: For the rate of payment, see § 5.524, ''Awards of dependency and indemnity compensation benefits to children when there is a retroactive award to a school child.''

(e) *Claims filed outside the one-year period.* If VA receives a claim referred to in paragraphs (b) or (c), or evidence referred to in paragraph (d), of this section after the expiration of the 1-year period, the effective date will be the date VA receives the claim or evidence.

(f) *Payments for vacation or holiday periods.* (1) *Child returns to an approved educational institution.* A child is considered to be pursuing a course of instruction at an approved educational institution during a vacation or holiday period if the child:

(i) Was pursuing a course of instruction at an approved educational institution immediately before the vacation or holiday period; and

(ii) Resumes the course of instruction at the beginning of the next term either at the same or a different approved educational institution.

(2) *Child fails to return to an approved educational institution.* When payment has been made for a vacation or holiday period, and the child does not resume the course of instruction, benefits will be discontinued effective the first day of the month after the month for which VA last paid benefits, or the first day of the month that the child was scheduled to resume the course of instruction, whichever date is earlier.

(Authority: 38 U.S.C. 5112(b)(7))

(g) *Ending dates.* (1) *Course of instruction completed.* Except as provided in paragraph (f)(2) of this section, benefits will be paid under this section through the last day of the month in which a course of instruction was or will be completed.

(2) *Termination of course of instruction before completion.* Benefits will be paid under this section through the last day of the month in which the course of instruction was terminated.

(h) *Transfer to another course of instruction or another educational institution.* Payments previously made under this section will not be adjusted because the child changed a course of instruction or transferred to a different approved educational institution.

(i) *Bars to benefit payments under this section.* Benefits under this section will not be paid if:

(1) The child has elected to receive educational assistance under 38 U.S.C. chapter 35 (see §§ 5.764 and 21.3023 of this chapter); or

(2) The child is pursuing a course of instruction at an approved educational institution where the child is completely supported at the expense of the Federal Government, such as a military service academy.

(Authority: 38 U.S.C. 501(a))

§ 5.696 Awards of dependency and indemnity compensation when not all dependents apply.

Except as provided in § 5.536(d), ''One parent—marriage ends or parent is separated from spouse,'' in any case where a dependency and indemnity compensation (DIC) claim has been filed by or on behalf of at least one dependent but VA believes that other dependents may be entitled to DIC based on the death of the same veteran, the award (original or amended) to all dependents who have filed claims will be made for all periods at the rates and in the same manner as though there were no dependents other than the dependents who filed claims. However, if the file reflects that there are additional potential DIC claimants and less than 1 year has passed since the veteran's death, the award to a dependent who has filed a claim will be made at the rate which would be payable as if all dependents were receiving benefits. If, at the expiration of the 1-year period, claims have not been filed for such dependents, VA will pay the full rate to the dependents already receiving DIC. This payment will include any retroactive amounts to which they are entitled.

(Authority: 38 U.S.C. 501(a))

§ 5.697 Exchange rates for income received or expenses paid in foreign currencies.

(a) *Pension and parents' dependency and indemnity compensation (DIC) rates.* In determining the rate of pension or parents' DIC payable to an individual, VA will convert the amount of income received or expenses paid in foreign currencies into U.S. dollars using the quarterly exchange rates established by the U.S. Department of the Treasury as provided in this section. Benefits will be paid in U.S. dollars.

(1) *Calculation of pension or parents' DIC rates.* Because exchange rates for foreign currencies cannot be determined in advance, VA will estimate pension or parents' DIC rates using the most recent quarterly exchange rate. When the beneficiary or claimant informs VA of a change in income or expenses that would affect entitlement, VA will make retroactive benefit adjustments based on the exchange rate in effect at the time VA received notice of the change in income or expenses.

(2) *Retroactive adjustments due to changes in exchange rates.* (i) For retroactive adjustments to pension or parents' DIC rates due to changes in the currency exchange rate, VA will use the average of the four most recent quarterly exchange rates.

(ii) If income or expenses are reported for a prior reporting period, VA will calculate any retroactive benefit rate adjustment using the average of the four most recent quarterly exchange rates which were available on the last day of the reporting period for which the income is being reported. See § 5.708(a)(2) (definition of ''reporting period'').

(b) *Burial benefits*—(1) *General rule.* VA will calculate monetary burial

benefits (as defined in [regulation that will be published in a future Notice of Proposed Rulemaking]) payable as reimbursement for burial expenses paid in foreign currency using the quarterly exchange rate for the quarter in which expenses were paid. If the U.S. Department of the Treasury has not yet published a rate for that quarter, the payment amount will be calculated using the most recent quarterly exchange rate. Payments will be made in U.S. dollars.

(2) *Exception.* If burial benefits are payable to an unpaid creditor, VA will calculate the payment amount using the quarterly exchange rate for the quarter in which the veteran died. When entitlement originates during a quarter for which the U.S. Department of the Treasury has not yet published a quarterly rate, amounts due will be calculated using the most recent quarterly exchange rate. Payments will be made in U.S. dollars.

(c) *Accrued benefits*— (1) *General rule.* Accrued benefits, as defined in § 5.550, may be paid in accordance with § 5.555 as reimbursement to the person who bore the expense of the deceased beneficiary's last illness and/or burial. VA will calculate such accrued benefits based on expenses paid in foreign currency using the quarterly exchange rate for the quarter in which the expenses were paid. If the U.S. Department of the Treasury has not yet published a rate for that quarter, the payment amount will be calculated using the most recent quarterly exchange rate. Payments will be made in U.S. dollars.

(2) *Exception.* If accrued benefits are payable to an unpaid creditor, VA will calculate the payment amount using the quarterly exchange rate for the quarter in which the beneficiary died. When entitlement originates during a quarter for which the U.S. Department of the Treasury has not yet published a quarterly rate, amounts due will be calculated using the most recent quarterly rate. Payments will be made in U.S. dollars.

(Authority: 38 U.S.C. 501(a))

§§ 5.698–5.704 Reserved

General Reductions, Discontinuances, and Resumptions

§ 5.705 General effective dates for reduction or discontinuance of benefits.

(a) General rule. Except as otherwise provided, VA will assign an effective date for the reduction or discontinuance of disability compensation, pension, dependency and indemnity compensation (DIC), or the monetary allowances under chapter 18 of title 38, United States Code, in accordance with the facts found. If more than one effective-date provision applies to a particular issue or event, VA will reduce or discontinue the benefit(s) in accordance with the earliest applicable date. VA will pay a reduced rate or discontinue benefits effective the date of reduction or discontinuance.

(b) The following table lists the locations of specific reduction and discontinuance effective-date provisions in part 5. The table is provided solely for informational purposes, and does not contain any substantive rules.

Effective-date provision	Part 5 location
Subpart C—Adjudicative Process, General	
Filing a claim for death benefits	§ 5.53(c)
Requirement to provide Social Security numbers	§ 5.101(c)
Failure to report for VA examination or reexamination	§ 5.103(d)
Certifying continuing eligibility to receive benefits	§ 5.104(c)
Effective dates based on change of law or VA issue	§ 5.152(b)
Effective dates for reduction or discontinuance of awards based on erroneous payments	§ 5.165
Effective dates for severing service connection or discontinuing or reducing benefit payments	§ 5.177
Subpart D—Dependents and Survivors	
Evidence of dependency—reduction or discontinuance of VA benefits	§ 5.181(c)
Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent	§ 5.184
Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to marriage or remarriage	§ 5.197
Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to divorce or annulment	§ 5.198
Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person	§ 5.204
Effective date of reduction or discontinuance—child reaches age 18 or 23	§ 5.231
Effective date of reduction or discontinuance—terminated adoptions	§ 5.232
Effective date of reduction or discontinuance—stepchild no longer a member of the veteran's household	§ 5.233
Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self-support	§ 5.234
Subpart E—Claims for Service Connection and Disability Compensation	
Effective dates—reduction or severance of service-connected disability compensation	§ 5.313
Effective dates—discontinuance of total disability rating based on individual unemployability	§ 5.314
Effective dates—reduction or discontinuance of additional disability compensation based on parental dependency	§ 5.315
Effective dates—Additional compensation for regular aid and attendance payable for a veteran's spouse	§ 5.334(b)
Subpart F—Nonservice-Connected Disability Pensions and Death Pensions	
Effective dates for awards, reductions, and discontinuances of special monthly pension	§ 5.393
Improved Pension income adjustments—effective dates, categories, and counting	§ 5.421(a), (c)
Improved Pension time limits to establish entitlement or to increase rate based on income	§ 5.423
Effective date of discontinuance of Improved Death Pension payments to a beneficiary no longer recognized as the veteran's surviving spouse	§ 5.433
Award, or discontinuance of award, of Improved Death Pension to a surviving spouse where Improved Death Pension payments to a child are involved	§ 5.434(b), (c)

Effective-date provision	Part 5 location
Effective dates for Old-Law Pension and Section 306 Pension reductions or discontinuances	§ 5.477
Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary	
Awards of dependency and indemnity compensation benefits to children when there is a retroactive award to a school child	§ 5.524(c)
Effective dates for discontinuance of DIC or death compensation payments to a person no longer recognized as the veteran's surviving spouse	§ 5.568
Effective date for award, or termination of award, of DIC or death compensation to a surviving spouse where DIC or death compensation payments to children are involved	§ 5.569
Effective date for reduction in DIC—surviving spouses	§ 5.570
Effective date for reduction or discontinuance based on increased income—parents' DIC	§ 5.572
Effective date for dependency and indemnity compensation rate adjustments when an additional dependent files an application	§ 5.573
Effective dates of awards and discontinuances of special monthly dependency and indemnity compensation	§ 5.574(b)
Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors	
Awards of VA benefits based on special acts or private laws	§ 5.581(d), (e)
Effective dates of awards for certain disabled children of Vietnam veterans	§ 5.591
Subpart I—Benefits for Certain Filipino Veterans and Survivors	
Filipino veterans and their survivors: Effective dates of reductions and discontinuances for benefits at the full-dollar rate	§ 5.618
Subpart K—Matters Affecting the Receipt of Benefits	
Effective dates—forfeiture	§ 5.681
Presidential pardon for offenses causing forfeiture	§ 5.682(d)
Renouncement of benefits	§ 5.683(c)
Subpart L—Payments and Adjustments to Payments	
Beginning date for certain VA benefit payments	§ 5.693(b)
Benefits paid to or for a child pursuing a course of instruction at an approved educational institution	§ 5.695(b)–(g)
Eligibility verification reports	§ 5.708(f), (g)
Adjustment in benefits due to reduction or discontinuance of a benefit to another payee	§ 5.710(b)
Payment to dependents due to the disappearance of a veteran for 90 days or more	§ 5.711(b), (c), (d)
Suspension of VA benefits due to the disappearance of a payee	§ 5.712
Restriction on VA benefit payments to an alien located in enemy territory	§ 5.713(b)
Reduction of special monthly compensation based on the need for regular aid and attendance while a veteran is receiving hospital care	§ 5.720(b), (e), (f)
Resumption of special monthly compensation based on the need for regular aid and attendance when a veteran is discharged or released from hospital care	§ 5.721(c), (b)
Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care	§ 5.722(a), (d), (e), (f)
Reduction of Improved Pension while a veteran or surviving spouse is receiving Medicaid-covered care in a nursing facility	§ 5.723(b), (c)
Reduction of special monthly pension based on the need for regular aid and attendance for Improved Pension while a veteran is receiving hospital care	§ 5.724(b), (d), (e)
Resumption of Improved Pension and special monthly pension based on the need for regular aid and attendance after discharge or release from hospital care	§ 5.725(c), (d)
Reduction of Section 306 Pension while a veteran is receiving hospital care	§ 5.726(a), (d)
Reduction of Old-Law Pension while a veteran is receiving hospital care	§ 5.727(a), (c)
Reduction of special monthly pension based on the need for regular aid and attendance for Old-Law Pension or Section 306 Pension while a veteran is receiving hospital care	§ 5.728(b), (e)
Resumption of Section 306 Pension and special monthly pension based on the need for regular aid and attendance when a veteran is discharged or released from hospital care	§ 5.729(c), (e)
Resumption of Old-Law Pension and special monthly pension based on the need for regular aid and attendance when a veteran is discharged or released from hospital care	§ 5.730(c), (d), (e)
General effective dates for awarding, reducing, or discontinuing VA benefits because of an election	§ 5.743(b)
Prohibition against receipt of active military service pay and VA benefits for the same period	§ 5.746(c)
Effect of election of compensation under the Radiation Exposure Compensation Act of 1990 on payment of certain VA benefits	§ 5.754(d)
Payment of multiple VA benefits to a surviving child based on the service of more than one veteran	§ 5.762(c)(6)(ii)
Payment of dependents' educational assistance (DEA) and VA pension or dependency and indemnity compensation (DIC) for the same period	§ 5.764(a)
Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries	
Effective date of apportionment discontinuance or reduction	§ 5.784
Determinations of incompetency	§ 5.791(d)
Incarcerated beneficiaries—general provisions and definitions	§ 5.810(c)

Effective-date provision	Part 5 location
Discontinuance of pension during incarceration	§ 5.813(b)

(Authority: 38 U.S.C. 501(a), 1832, 5112)

Cross Reference: Additional time period before certain reductions or discontinuances take effect. See § 5.177.

§ 5.706 Payments excluded in calculating income or net worth.

(a) *Scope.* This section describes payments excluded by Federal statutes from income and net worth determinations for VA benefits that are provided based on financial need. These benefits are Improved Pension, Section 306 Pension, Old-Law Pension, parents' dependency and indemnity compensation (DIC), and additional amounts of veterans' compensation payable for dependent parents. Income and net worth rules applying solely to a specific benefit are included in the regulations that deal with that specific benefit.

(b) *Specific payments excluded.* The following table states whether certain payments are included or excluded as income or net worth for any VA-administered benefit program that is based on financial need. This table does not confer any substantive rights.

Program or payment	Income	Net worth	Authority
Compensation or Restitution Payments			
(1) *Relocation payments.* Payments to persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Excluded ..	Included ...	42 U.S.C. 4636.
(2) *Crime victim compensation.* Amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.	Excluded ..	Excluded ..	42 U.S.C. 10602(c).
(3) *Restitution to individuals of Japanese ancestry.* Payments made as restitution under Pub. L. 100–383 to an individual of Japanese ancestry who was interned, evacuated, or relocated during the period of December 7, 1941 through June 30, 1946, pursuant to any law, Executive Order, Presidential proclamation, directive, or other official action respecting these individuals.	Excluded ..	Excluded ..	50 U.S.C. App. 1989b–4(f).
(4) *Victims of Nazi persecution.* Payments made to individuals because of their status as victims of Nazi persecution.	Excluded ..	Excluded ..	Sec. 1(a), Pub. L. 103–286, 108 Stat. 1450, 42 U.S.C. 1437a note.
(5) *Agent Orange settlement payments.* Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).	Excluded ..	Excluded ..	Sec. 1, Pub. L. 101–201, 103 Stat. 1795.
(6) *Chapter 18 benefits.* Allowances paid under 38 U.S.C. chapter 18 to a veteran's child with a birth defect.	Excluded ..	Excluded ..	38 U.S.C. 1833(c).
Payments to Native Americans			
(7) *Indian judgment fund distributions.* Funds listed in 25 U.S.C. 1407	Excluded ..	Excluded ..	25 U.S.C. 1407.
(8) *Interests of individual Indians in trust or restricted lands.* Interests of individual Indians in trust or restricted lands and up to $2,000 per year of income received by individual Indians that is derived from such interests.	Excluded ..	Excluded ..	25 U.S.C. 1408.
(9) *Submarginal land.* Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.	Excluded ..	Excluded ..	25 U.S.C. 459e.
(10) *Old Age Assistance Claims Settlement Act.* Up to $2,000 of per capita distributions under the Old Age Assistance Claims Settlement Act.	Excluded ..	Excluded ..	25 U.S.C. 2307.
(11) *Alaska Native Claims Settlement Act.* Any of the following, if received from a Native Corporation, under the Alaska Native Claims Settlement Act: (i) Cash, including cash dividends on stocks and bonds, up to a maximum of $2,000 per year; (ii) Stock, including stock issued as a dividend or distribution; (iii) Bonds that are subject to the protection under 43 U.S.C. 1606(h) until voluntarily and expressly sold or pledged by the shareholder after the date of distribution; (iv) A partnership interest; (v) Land or an interest in land, including land received as a dividend or distribution on stock; (vi) An interest in a settlement trust.	Excluded ..	Excluded ..	43 U.S.C. 1626(c).
(12) *Maine Indian Claims Settlement Act.* Payments received under the Maine Indian Claims Settlement Act of 1980.	Excluded ..	Excluded ..	25 U.S.C. 1728.
Work-Related Payments			
(13) *Workforce investment.* Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. chapter 30).	Excluded ..	Included ...	29 U.S.C. 2931(a)(2).
(14) *AmeriCorps participants.* Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990.	Excluded ..	Included ...	42 U.S.C. 12637(d).

Program or payment	Income	Net worth	Authority
(15) *Volunteer work.* Compensation or reimbursement to volunteers involved in programs administered by the Corporation for National and Community Service, unless the payments are equal to or greater than the minimum wage. The minimum wage is either under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or under the law of the State where the volunteers are serving, whichever is greater.	Excluded ..	Excluded ..	42 U.S.C. 5044(f).
Miscellaneous Payments			
(16) *Food stamps.* Value of the allotment provided to an eligible household under the Food Stamp Program.	Excluded ..	Excluded ..	7 U.S.C. 2017(b).
(17) *Food for children.* Value of free or reduced price for food under the Child Nutrition Act of 1966.	Excluded ..	Excluded ..	42 U.S.C. 1780(b).
(18) *Child care.* Value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990.	Excluded ..	Excluded ..	42 U.S.C. 9858q.
(19) *Services for housing recipients.* Value of services, but not wages, provided to a resident of an eligible housing project under a congregate services program under the Cranston-Gonzalez National Affordable Housing Act.	Excluded ..	Excluded ..	42 U.S.C. 8011(j)(2).
(20) *Home energy assistance.* The amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under the Low-Income Home Energy Assistance Act.	Excluded ..	Excluded ..	42 U.S.C. 8624(f).
(21) *Programs for older Americans.* Payments, other than wages or salaries, received from programs funded under the Older Americans Act of 1965 (42 U.S.C. chapter 35).	Excluded ..	Included ...	42 U.S.C. 3020a(b).
(22) *Student financial aid.* Amounts of student financial assistance received under Title IV of the Higher Education Act of 1965, including Federal work-study programs or under Bureau of Indian Affairs student assistance programs, or vocational training under the Carl D. Perkins Vocational and Technical Education Act of 1998.	Excluded ..	Excluded ..	20 U.S.C. 1087uu, 2415(a).
(23) *Retired Serviceman's Family Protection Plan annuities.* Annuities received under subchapter 1 of the Retired Serviceman's Family Protection Plan.	Excluded ..	Included ...	10 U.S.C. 1441.
(24) *Medicare Prescription Drug Discount Card and Transitional Assistance Program*	Excluded ..	Excluded ..	42 U.S.C. 1395w–141(g)(6).

(Authority: 38 U.S.C. 501(a))

§ 5.707 Deductible medical expenses.

(a) *Scope.* This section describes the medical expenses that VA will deduct for purposes of three of VA's benefit programs based on financial need: Improved Pension, Section 306 Pension, and parents' dependency and indemnity compensation (DIC). For the rules governing how such medical expenses are deducted, see 5.413 Income deductions for calculating adjusted annual income (regarding Improved Pension), 5.474 Deductible Expenses for Section 306 Pension Only, and 5.532 Deductions from income (regarding parents' DIC).

(b) *Definition of licensed healthcare provider.* For purposes of this section, the term ''licensed healthcare provider'' means an individual licensed to provide health services in the state in which the individual provides health services. The term includes, but is not limited to, physician, registered nurse, licensed vocational nurse, or licensed practical nurse.

(c) *Medical Expenses—general.* The following payments are ''medical expenses'' that will be deducted from income if they are not reimbursed:

(1) *Care by a licensed healthcare provider.* Payments made for diagnosis, treatment, rehabilitation, or preventive maintenance (such as an annual physical examination).

(2) *Medical supplies and medications.* Payments made for prescribed medication and legal non-prescription medication. This category also includes medically necessary food, beverages, and vitamins that a licensed healthcare provider authorized to write prescriptions directs an individual to take.

(3) *Adaptive equipment.* Payments made for adaptive devices or companion animals used to assist an individual with an ongoing disability, to the extent that a non-disabled person would not normally make such payments.

(4) *Transportation expenses.* Payments made for transportation for medical purposes (including transportation to and from a licensed healthcare provider's office). When an individual uses a private vehicle, the deductible expense for traveling will be limited to 20 cents per mile traveled, but the full cost of parking, taxi, bus, or other transportation costs will be deducted.

(5) *Health insurance premiums.* Payments made for health, medical, and hospitalization insurance premiums. This category includes Medicare premiums.

(6) *Institutional forms of care and in-home attendants.* The following payments are ''medical expenses'' that will be deducted from income:

(i) *Nursing home care.* Payments made to a facility that provides extended term inpatient medical care and made for such care, if a responsible official of the facility certifies that the individual is a patient (as opposed to a resident) in the facility.

(ii) *In-home attendant.* Payments made for an in-home attendant for personal care and maintenance of the immediate environment of an individual who is in need of regular aid and attendance or is housebound, if the attendant is providing some medical or nursing services. The attendant need not be a licensed healthcare provider. The attendant may be a family member.

(iii) *Veterans in State homes.* Payments made to a ''State home,'' such as a veterans' or soldiers' and sailors' home (or the equivalent) operated by a State, for the domiciliary care or nursing and hospital care of a veteran who is a patient (as opposed to a resident) in the State home.

(iv) *Custodial Care.* Payments made to an institution that houses and maintains an individual because the individual needs to live in a protected environment, to the extent the payments are made for medical treatment but not to the extent they are made for strictly custodial care.

(v) *Government Institution.* Payments to a government institution for a physician-supervised program of

therapy or rehabilitation for an individual at that institution.

(vi) *Adult Day Care, Rest Homes, Group Homes.* Payments to an adult day care facility, rest home, or group home in which an individual is maintained rather than in a nursing home, subject to paragraphs (c)(6)(vi)(A) through (C) of this section:

(A) If the individual is in need of regular aid and attendance or is housebound, all reasonable fees paid to the facility are deducted from countable annual income if the facility provides some medical or nursing services to the individual. The services need not be provided by a licensed healthcare provider.

(B) If the individual is not in need of regular aid and attendance and is not housebound, VA will deduct all reasonable fees paid to the facility, but only to the extent that they are for medical treatment provided by a licensed healthcare provider.

(C) If the institution is a government facility, paragraph (c)(6)(v) of this section applies.

(Authority: 38 U.S.C. 501(a), 1503(a)(8), 1315(f)(3))

§ 5.708 Eligibility verification reports.

(a) *Definitions.* (1) An ''eligibility verification report'' (EVR) is a form that VA may use to obtain from claimants and beneficiaries information about factors that affect entitlement to Improved Pension and parents' dependency and indemnity compensation (DIC). See § 5.709(b) for a list of some of the factors that affect entitlement to these benefits.

(2) A ''reporting period'' is a time period established by VA for which a claimant or beneficiary reports income, adjustments to income, and net worth to VA.

(b) *Circumstances when VA may require completion of an eligibility verification report (EVR).* Except as provided in paragraph (c) of this section, claimants or beneficiaries of pension or parents' DIC must, as a condition of receipt or continued receipt of benefits, file a completed EVR upon request in the following circumstances:

(1) *EVRs for claimants.* VA may require a claimant to file a completed EVR annually, or when necessary to update, complete, or clarify information regarding the claimant's income or marital status or any other factor that affects entitlement.

(2) *EVRs for beneficiaries.* VA may require a beneficiary to file a completed EVR annually or if:

(i) The Social Security Administration has not verified the social security number of the beneficiary or, if applicable, the beneficiary's spouse;

(ii) Evidence suggests that the beneficiary or, if applicable, the beneficiary's spouse or child, may have received income from sources other than the Social Security Administration during the current or previous calendar year; or

(iii) The Secretary decides completion of an EVR is necessary to ensure accurate and timely reporting of changes in the factors that affect entitlement or to protect the Improved Pension and parents' DIC programs from fraud.

(c) *Eligibility verification reports for certain parents receiving parents' DIC.* A parent receiving parents' DIC is not required to file an EVR if:

(1) The parent has reached age 72; and

(2) The parent has been receiving parents' DIC during 2 consecutive calendar years.

However, a parent receiving parents' DIC must notify VA whenever there is a material change in his or her annual income.

(Authority 38 U.S.C. 1315(e))

(d) *Action VA takes upon receipt of information or an eligibility verification report (EVR).* When determining whether an individual is entitled to benefits, VA will consider any new information provided in an EVR or through other means. VA may award, deny, increase, reduce, or discontinue benefits based on the information provided. When the expected annual income is uncertain, payment of pension or parents' DIC will be authorized at the lowest rate or discontinued, as provided in § 5.423, § 5.478(a), or § 5.531(e).

(e) *Action VA takes when a claimant does not return an eligibility verification report (EVR).* If VA does not receive a completed EVR within 60 days after the date VA requested the EVR from a claimant, VA will deny the claim.

(f) *Action VA takes when a beneficiary does not return a completed eligibility verification report (EVR)*—(1) *Failure to return an EVR.* If VA does not receive an EVR within 60 days after the date VA requested the EVR from a beneficiary, VA will immediately suspend further benefit payments.

(2) *Return of an incomplete EVR.* If VA receives an incomplete EVR no later than 60 days after the date VA requested the EVR from a beneficiary, VA will notify the beneficiary that the EVR is incomplete and inform the beneficiary of the additional information needed to complete the EVR. If VA does not receive a completed EVR within 120 days after the date VA first requested the EVR from the beneficiary, VA will immediately suspend further benefit payments.

(3) *Discontinuance for failure to return a completed EVR.* A beneficiary whose benefits were suspended under paragraphs (f)(1) or (2) of this section must return the completed EVR no later than 1 year after the date VA first requested the EVR from the beneficiary. Otherwise, VA will discontinue benefits as follows:

(i) If the reporting period is the initial reporting period, the effective date of discontinuance is the first day of that period; or

(ii) If the reporting period is a subsequent reporting period, the effective date of discontinuance is the first day of the calendar year for which the beneficiary was asked to provide information in the EVR.

(g) *Action VA takes when a beneficiary returns an eligibility verification report (EVR) after benefits were suspended or discontinued.* If benefits were suspended or discontinued under paragraph (f) of this section, VA will resume payments (if otherwise in order) as follows:

(1) If VA receives the completed EVR no later than 1 year after the end of the reporting period for which the beneficiary was asked to provide the EVR, VA will resume payment of benefits as follows:

(i) *Payments suspended but not discontinued.* If payments are suspended but not discontinued, such payments will be resumed effective the date of suspension.

(ii) *Payments discontinued effective before the date of suspension.* If payments are discontinued effective before the date of suspension, such payments will be resumed effective the date of discontinuance.

(2) If VA receives the completed EVR more than 1 year after the end of the reporting period, VA will treat the EVR as a new claim.

(h) *VA will accept the eligibility verification report (EVR) at any time to reduce a debt.* A former beneficiary who owes or owed money to VA because VA discontinued payments for failure to file an EVR within the time limit in paragraph (f) of this section may submit the EVR at any time. If, based on information in the EVR, VA decides that the former beneficiary was entitled to benefits for any part of the period of time in which payment had been discontinued for failure to file an EVR, VA will offset the debt for that part of the period. Once the debt has been completely offset, VA will not pay additional benefits for that period.

(Authority: 38 U.S.C. 501(a), 1506)

§ 5.709 Claimant and beneficiary responsibility to report changes.

(a) Claimants and beneficiaries of pension or parents' dependency and indemnity compensation (DIC) must promptly notify VA of any material change in a factor that affects entitlement to the benefit that they are claiming or receiving. VA may request any information or evidence that is necessary to determine whether the individual is entitled (or continues to be entitled) to a benefit. See § 5.708 (explaining the circumstances when VA will require an EVR).

(b) The following table lists factors that often change and that affect entitlement to pension or parents' DIC. The table is intended solely for informational purposes. It is not intended to confer any substantive rights and does not list every factor that could affect entitlement to pension or parents' DIC.

Benefit type (beneficiary)	Claimant/beneficiary and applicable dependent(s)	Factors affecting Claimant/Beneficiary's entitlement to pension or parents' DIC benefits. ("YES" indicates that the factor may affect entitlement. "NO" indicates that the factor does not affect entitlement)					
		Income	Marital status	Net worth	Number of children (See § 5.220)	Nursing home status	School attend-ance (if 18 or older)
Improved							
Disability Pension (Veteran)	Veteran	YES	YES	YES	YES	YES	NO.
	Dependent spouse	YES	YES	YES	YES	NO	NO.
	Dependent child	YES[1]	YES	YES	NO	NO	YES.
Death Pension (Surviving spouse)	Surviving spouse	YES	YES	YES	YES	YES	NO.
	Dependent child	YES[1]	YES	YES	NO	NO	YES.
Death Pension (Surviving child)	Surviving child	YES[1]	YES	YES	NO	NO	YES.
	Child's legal custodian	YES[4]	NO	YES	NO	NO	NO.
Section 306							
Disability Pension (Veteran)	Veteran	YES	YES	YES	YES	YES	NO.
	Dependent spouse	YES[2]	YES	NO	YES	NO	NO.
	Dependent child	NO	YES	NO	NO	NO	YES.
Death Pension (Surviving spouse)	Surviving spouse	YES	YES	YES	YES	YES	NO.
	Dependent child	YES[3]	YES	NO	NO	NO	YES.
Death Pension (Surviving child)	Surviving child	YES[5]	YES	YES	NO	NO	YES.
	Child's legal custodian	NO	NO	NO	NO	NO	NO.
Old-Law							
Disability Pension (Veteran)	Veteran	YES	YES	NO	YES	YES	NO.
	Dependent spouse	NO	YES	NO	YES	NO	NO.
	Dependent child	NO	YES	NO	NO	NO	YES.
Death Pension (Surviving spouse)	Surviving spouse	YES	YES	NO	YES	YES	NO.
	Dependent child	YES[3]	YES	NO	NO	NO	YES.
Death Pension (Surviving child)	Surviving child	YES	YES	NO	NO	NO	YES.
	Child's legal custodian	NO	NO	NO	NO	NO	NO.
Parents' DIC (Surviving parent)	Surviving parent	YES	YES	NO	NO	YES	NO.
	Surviving parent's spouse	YES[6]	YES	NO	NO	YES	NO.

[1] A child's earned income (wages and/or salary) is not a factor under certain circumstances described in § 5.411(b).
[2] For exceptions to this rule, see § 5.473.
[3] A child's income is not a factor unless it is turned over to the surviving spouse. (See § 5.473)
[4] The income of a custodian is a factor unless the custodian is an institution rather than an individual.
[5] Only unearned income (income other than wages and/or salary) is a factor. (See § 5.473)
[6] The income of a surviving parents' spouse is a factor unless the parent and spouse are not living together.

(Authority: 38 U.S.C. 501(a), 1315, 1521(b), (c), and (h); 1522, 1541(b), (c), and (g); 1542; 1543; sec. 306, Pub. L. 95–588 92 Stat. 2497)

§ 5.710 Adjustment in benefits due to reduction or discontinuance of a benefit to another payee.

(a) *Effect of reduction or discontinuance of another payee's benefit.* If a payee becomes entitled to pension, disability compensation, or dependency and indemnity compensation (DIC), or an increase in such a benefit because payment of the same benefit to another payee has been reduced or discontinued, the award or increase will be paid without the filing of a new claim, except as provided in paragraph (b) of this section.

(b) *Effective date.* VA will award or increase the payee's benefit and pay the appropriate rate effective the day following the reduction or discontinuance of the benefit to the other payee. If VA requests information or evidence, it must be received no later than 1 year after the date of VA's request. If the information or evidence is not received within 1 year, the effective date will be the date VA receives a new claim.

(c) *Rate payable.* The rate for the persons entitled will be the rate that would have been payable if they had been the only original persons entitled.

(Authority: 38 U.S.C. 501(a))

§ 5.711 Payment to dependents due to the disappearance of a veteran for 90 days or more.

(a) *General.* When a veteran receiving or entitled to receive disability compensation, Section 306 Pension, or Improved Pension disappears for 90 days or more, benefits will be paid to the veteran's dependent(s) as provided in this section. Dependents will be paid under this section only if the veteran's whereabouts are unknown to the dependent(s) and to VA and a claim is received from the dependent(s).

(b) *Veteran receiving or entitled to receive disability compensation.* If the veteran was receiving or was entitled to receive disability compensation, benefits may be paid to the veteran's spouse, child, and/or dependent parent.

(1) *Rate payable.* The total amount the veteran's dependent(s) will be paid is the lesser of either the total amount of dependency and indemnity compensation (DIC) that would be payable if the veteran had died from a service-connected disability or the amount of disability compensation (minus any authorized insurance deductions) the veteran would have received or been entitled to receive at the time of the veteran's disappearance.

(i) If VA pays DIC pursuant to this paragraph, then it will pay benefits to the dependents as if the veteran were deceased.

(ii) If VA pays disability compensation pursuant to this paragraph, then it will pay benefits in equal amounts to the dependents.

(2) *Effective date of payments.* (i) If a claim for benefits under this section is received no later than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, then payments to the veteran's dependent(s) will be payable effective the first day of the month after the month for which VA last paid benefits to the veteran.

(ii) If a claim for benefits under this section is received more than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, payments to the veteran's dependent(s) will be payable effective the date VA receives the claim.

(c) *Veteran receiving or entitled to receive pension.* If the veteran was receiving or entitled to receive Section 306 Pension or Improved Pension, benefits may be paid to the veteran's spouse and/or child(ren). The veteran's permanent and total disability status, income, and net worth will be presumed to continue unchanged.

(1) *Rate payable.* The total amount payable to the veteran's dependent(s) will be either the rate of Improved Death Pension payable if the veteran had died of a non-service-connected disability or the amount of pension the veteran would have received at the time of disappearance, whichever amount is less.

(2) *Effective date of payments.* (i) If a claim is received no later than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, payments to the veteran's dependent(s) will be payable effective the first day of the month after the month for which VA last paid benefits to the veteran.

(ii) If a claim for benefits is received more than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, payments to the veteran's dependent(s) will be payable effective the date VA receives the claim.

(d) *Discontinuance of payments to veteran's dependent(s)*—(1) *Veteran's whereabouts become known.* If VA becomes aware of the veteran's whereabouts, payments to the veteran's dependent(s) will be discontinued effective the first day of the month after the month for which VA last paid benefits to the veteran's dependent(s).

(2) *Veteran presumed dead.* Payments to the veteran's dependent(s) will be discontinued if the veteran is presumed dead under § 5.502, ''Proving death after 7 years of continuous, unexplained absence.''

(Authority: 38 U.S.C. 1158, 1507)

§ 5.712 Suspension of VA benefits due to the disappearance of a payee.

(a) If a payee's whereabouts are unknown, then VA will suspend payment of pension, disability compensation, dependency and indemnity compensation, the monetary allowance under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects, or other monetary allowances.

(b) If benefits were suspended under paragraph (a) of this section, then VA will resume payments if the payee's whereabouts become known. The effective date of payments will be the first day of the first month for which benefits were suspended if entitlement is otherwise established. Retroactive payments under this paragraph (b) will be reduced by the amount of any payments made to a veteran's dependents under § 5.711.

(Authority: 38 U.S.C. 501(a))

§ 5.713 Restriction on VA benefit payments to an alien located in enemy territory.

(a) *Restriction on payment.* VA will discontinue all VA benefits except insurance payments to an alien who is:

(1) Located in the territory of an enemy of the United States or an enemy of any ally of the United States; or

(2) Located in territory which is under the military control of an enemy of the United States or an enemy of any ally of the United States.

(b) *Apportionment of benefits.* VA may apportion to the dependent(s) of an affected alien all or any part of the benefits discontinued under paragraph (a) of this section.

(1) The amount payable to each dependent may not exceed the amount that would be payable if the alien had died.

(2) VA will discontinue payments to the dependents effective the date it receives notice that the alien is no longer located in the territory described in paragraph (a) of this section.

(3) VA will reduce or discontinue payments to a dependent upon the death of the alien or dependent, upon reduction or discontinuance of the alien's benefits, or when dependent status ends.

(c) *Claims for discontinued benefits.* See § 5.715, ''Claims for undelivered or discontinued benefits.''

(Authority: 38 U.S.C. 5112(a), 5308)

§ 5.714 Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list.

(a) *Definitions.* For purposes of this part 5:

(1) *Payee* means a person to whom a VA benefit check is payable.

(2) *Special deposit account* means the ''Secretary of the Treasury, Proceeds of Withheld Foreign Checks'' account established under 31 U.S.C. 3329(b)(4).

(3) *Treasury Department list* is the list of countries identified by the Secretary of the Treasury in 31 CFR 211.1, ''Withholding delivery of checks,'' to which checks cannot be delivered with reasonable assurance that the payee will actually receive the check and be able to negotiate it for full value.

(b) *Evidence requests.* Unless a claimant or payee who is living in a country on the Treasury Department list requests the alternative means of delivery described in paragraph (c) of this section, VA will not request evidence in support of a claim for VA benefits if such evidence would be obtained from a country on the Treasury Department list.

(c) *Restriction on check delivery.* VA will not send benefit checks to a payee

located in a country on the Treasury Department list or to a guardian or other person in the United States or a territory or possession of the United States who is legally responsible for the care of a payee located in a country on the Treasury Department list.

(d) *Alternative delivery permitted.* If requested by a payee located in a country on the Treasury Department list, VA will send VA benefit checks to him or her in care of a U.S. Foreign Service post, specified by the payee, in a country that is not on the Treasury Department list.

(e) *Disposition of benefit checks.* If the payee does not request the alternative means of delivery described in paragraph (d) of this section, VA benefit checks that are not delivered because of the restriction described in paragraph (c) of this section will be deposited into the special deposit account or into the U.S. Treasury as miscellaneous receipts, as required by 31 U.S.C. 3329(b) and 3330(b).

(f) *Claims for undelivered benefits.* See § 5.715, ''Claims for undelivered or discontinued benefits.''

(Authority: 31 U.S.C. 3329, 3330)

§ 5.715 Claims for undelivered or discontinued benefits.

(a) *Definitions.* For the definitions of ''payee,'' ''special deposit account,'' and ''Treasury Department list,'' see § 5.714(a).

(b) *Claims for undelivered or discontinued benefits.* (1) A payee may file with VA a claim for:

(i) Any amounts not paid because awarded benefits were discontinued under § 5.713, ''Restriction on VA benefit payments to an alien located in enemy territory''; or

(ii) Any undelivered benefit payments deposited to the payee's credit in the special deposit account or into the U.S. Treasury as miscellaneous receipts as described in § 5.714(e).

(2) There is no time limit for filing such a claim.

(3) Undelivered amounts will be released or a discontinued benefit resumed only if:

(i) For a payee whose VA benefits were discontinued under § 5.713, ''Restriction on VA benefit payments to an alien located in enemy territory,'' the payee is no longer subject to the restriction in § 5.713(a);

(ii) For a payee whose benefit checks were withheld under § 5.714, ''Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list,'' the payee is no longer subject to the restriction in § 5.714(c);

(iii) For a payee whose benefit checks were withheld under § 5.714, the country in which the payee is located is removed from the Treasury Department list; or

(iv) For a payee whose benefit checks were withheld under § 5.714, the payee requests the alternative means of delivery described in § 5.714(d).

(Authority: 31 U.S.C. 3329)

(c) *Forfeiture for treasonable acts.* Payment is subject to forfeiture of benefits for treasonable acts as provided in § 5.677.

(d) *Evidence requests.* Subject to § 5.90, VA may request evidence necessary to support a claim under this section. Evidence VA may request includes:

(1) Satisfactory evidence that the payee has not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy; and

(2) Evidence of continued entitlement to benefits during the time that awarded benefits were discontinued or benefit payments were undelivered.

(Authority: 38 U.S.C. 5308)

(e) *Germany and Japan.* No payments will be made for any period before the date of filing a new claim if payments were discontinued before July 1, 1954, because the payee was a citizen or subject of Germany or Japan.

(Authority: 38 U.S.C. 5309)

(f) *Payment of funds in special deposit account upon death of a payee.* See § 5.565, ''Special rules for payment of VA benefits on deposit in a special deposit account when a payee living in a foreign country dies.''

(Authority: 31 U.S.C. 3330)

§§ 5.716–5.739 Reserved.

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Part VI

The President

Proclamation 8312—National Alzheimer's Disease Awareness Month, 2008

Notice of October 30, 2008—Continuation of the National Emergency with Respect to the Situation in or in Relation to Sudan

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Friday, October 31, 2008

Presidential Documents

Title 3—

The President

Proclamation 8312 of October 29, 2008

National Alzheimer's Disease Awareness Month, 2008

By the President of the United States of America

A Proclamation

During National Alzheimer's Disease Awareness Month, we recognize the dignity and courage of the men and women living with Alzheimer's disease. We also honor the devoted family members and caretakers who bring them love and comfort, and we underscore our dedication to finding a cure for this tragic disease.

Alzheimer's disease is a brain disorder that seriously impairs a person's ability to function normally. Age is the most important known risk factor, and scientists are studying the role that genetics, education, diet, and environment might play in the development of this debilitating disease. Through research supported by the National Institutes of Health and the Department of Veterans Affairs, we are learning more about the disease and enhancing the quality of life for those affected. In addition, the Department of Health and Human Services is improving the delivery of home and community-based services to people with Alzheimer's.

National Alzheimer's Disease Awareness Month is an opportunity to pay tribute to the courageous individuals facing this disease and remember the precious lives lost due to Alzheimer's. All Americans appreciate the strong support and dedication of the families, medical professionals, scientific researchers, and caregivers who are helping build a society that values the life and dignity of every person.

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 November 2008 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, 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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Presidential Documents

Title 3—

The President

Notice of October 30, 2008

Continuation of the National Emergency with Respect to the Situation in or in Relation to Sudan

On November 3, 1997, by Executive Order 13067, a national emergency was declared with respect to Sudan, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. On April 26, 2006, in Executive Order 13400, I determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency to deal with that threat, and ordered the blocking of property of certain persons connected to the conflict. On October 13, 2006, I issued Executive Order 13412 to take additional steps with respect to the national emergency and to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, as expanded on April 26, 2006, must continue in effect beyond November 3, 2008. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 30, 2008.

[FR Doc. E8–26225
Filed 10–30–08; 11:15 am]
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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 ''P L U S'' (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.

H.R. 6197/P.L. 110–448

To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the ''Pickwick Post Office Building''. (Oct. 22, 2008; 122 Stat. 5013)

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