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10–4–06 Wednesday
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 8057 of September 28, 2006

Child Health Day, 2006

By the President of the United States of America

A Proclamation

America's young people enjoy a future of hope and promise, and we must be committed to supporting them through each opportunity and challenge they face ahead. Each year on Child Health Day, we emphasize the importance of keeping our children safe, encouraging them to practice healthy habits, and educating and empowering them to avoid risky behavior.

Parents are children's first teachers, and they play a crucial role in promoting good health and helping young people grow into responsible, moral, and productive adults. Violence, illegal drugs, alcohol, smoking, and early sexual activity are some of the top causes of disease and early death among our youth. By being vigilant and talking with their children about the issues they face, parents can teach children to make the right decisions when they are challenged by peer pressure or tempted to participate in dangerous activities.

My Administration recognizes the importance of investing in the health and well-being of our young people, and we remain committed to helping our children build healthy and successful lives. Through the Helping America's Youth Initiative, led by First Lady Laura Bush, we are encouraging children to make good choices, educating parents and communities on the importance of positive youth development, and supporting organizations that are dedicated to the success of America's children.

Every day, parents strive to raise their children to be strong and successful adults. By working together, families, teachers, mentors, and government and community leaders can help ensure young people enjoy the opportunity to have long and healthy lives.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 2, 2006, as Child Health Day. I call upon families, schools, child health professionals, faith-based and community organizations, and State and local governments to reach out to our Nation's young people, encourage them to avoid dangerous behavior, and help make the right choices to achieve their dreams.

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

[FR Doc. 06–8510
Filed 10–3–06; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Title 3—

The President

Proclamation 8058 of September 29, 2006

National Domestic Violence Awareness Month, 2006

By the President of the United States of America

A Proclamation

Domestic violence has no place in our society, and we have a moral obligation to help prevent it. The terrible tragedies that result from it destroy lives and insult the dignity of women, men, and children. National Domestic Violence Awareness Month is an opportunity to underscore our commitment to bringing an end to violence in the home.

A home should be a place of stability, comfort, and love. Domestic violence shatters this important foundation. My Administration is strongly committed to addressing domestic violence and helping those who have been victimized. In January, I was proud to sign legislation reauthorizing the Violence Against Women Act. Since I announced the Family Justice Center Initiative in 2003, we have opened 11 Family Justice Centers across the country. These centers offer services to victims and their families, including legal advice, counseling, and support. In addition, we are continuing to work with faith-based and community organizations to provide training, expertise, and funding to help deliver hope and healing to those who need it most.

During National Domestic Violence Awareness Month and throughout the year, we are grateful for the advocates, counselors, and others who provide care to those affected by these acts of cruelty and for the law enforcement personnel and others who work to bring offenders to justice. We extend our compassion to the victims of domestic violence and urge them to seek assistance through local Family Justice Centers, faith-based and community organizations, and the National Domestic Violence Hotline at 1–800–799–SAFE. By working together, we can build an America where every home honors the value and dignity of its loved ones.

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 October 2006 as National Domestic Violence Awareness Month. I urge all Americans to reach out to victims and help end domestic violence.

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

[FR Doc. 06–8522
Filed 10–3–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24697; Directorate Identifier 2006–NM–045–AD; Amendment 39–14781; AD 2006–20–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200PF, and –200CB series airplanes. This AD requires doing initial and repetitive detailed or high frequency eddy current inspections for cracks around the rivets at the upper fastener row of the skin lap splice of the fuselage, and repairing any crack found. This AD results from a report indicating that certain rivets were incorrectly installed in some areas of the skin lap splices during production because they were drilled with a countersink that was too deep. We are issuing this AD to detect and correct premature fatigue cracking at certain skin lap splice locations of the fuselage, and consequent rapid decompression of the airplane.

DATES: This AD becomes effective November 8, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 8, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200, –200PF, and –200CB series airplanes. That NPRM was published in the **Federal Register** on May 9, 2006 (71 FR 26875). That NPRM proposed to require doing initial and repetitive detailed or high frequency eddy current (HFEC) inspections for cracks around the rivets at the upper fastener row of the skin lap splice of the fuselage, and repairing any crack found.

Comments

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

Support for NPRM

American Airlines agrees with the NPRM and has no further comment at this time.

NPRM Not Applicable

Continental Airlines states that, based on the effectivity, the NPRM is not applicable to its 757 fleet.

Request To Add Credit for Alternate Inspections

Northwest Airlines (NWA) and Air Transport Association (ATA), on behalf of member airlines, ask that, to avoid unnecessary processing of an alternative method of compliance (AMOC), credit be allowed in this AD for accomplishing the lap splice inspections specified in Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005 (referenced in the NPRM as the source of service information for accomplishing the required actions). NWA states that paragraph 1.F. of the referenced service bulletin specifies that the lap splice inspections are approved as an AMOC to AD 2001–20–12, amendment 39–12460 (66 FR 52492, October 16, 2001) for the significant structural item (SSI) inspections. NWA adds that AD 2006–11–11, amendment 39–14615 (71 FR 30278, May 26, 2006) supersedes AD 2001–20–12.

We agree with the commenters. Accomplishing the requirements in paragraph (f) of AD 2006–11–11 terminates the requirements in paragraph (f) of this AD. We have added a new paragraph (i)(4) to this AD to specify that the inspections in the referenced service bulletin were approved as an AMOC to AD 2006–11–11.

Request To Revise Service Information

US Airways and ATA, on behalf of member airlines, recommend that, prior to release of a final rule, published repair information be provided in a subsequent revision to the referenced service bulletin or the Boeing 757–200 Structural Repair Manual (SRM). U.S. Airways states that published FAA-approved repair data as a means of compliance to the proposed rule will reduce the administrative burden of processing AMOCs between the operator and the Boeing Commercial Airplanes Delegation Option Authorization Organization. U.S. Airways adds that providing repair data in advance of the release of the final rule will result in expedited repairs and return airplanes to revenue service in a timely manner.

We partially agree with the commenters. Having all repair procedures in one place can be simpler for operators, but there is no repair method defined as yet, and we do not know if or when Boeing will revise its

service bulletin or SRM. Waiting to include a revised service bulletin or SRM in this action would delay addressing an unsafe condition. Therefore, we have made no change to the AD in this regard.

Clarify Description of Production Rivets

Boeing asks that we clarify the description of the production rivets installed in the skin lap splices by deleting "modified" when describing the rivets. Boeing states that the production rivets are commonly referred to as "Briles" rivets, and are manufactured with a 120-degree, modified shear head. Boeing notes that the current wording implies that the rivets were modified before installation on the aircraft.

We acknowledge Boeing's request for clarification. We have changed the description in the Summary section and in paragraph (d) of this AD as follows: "This AD results from a report indicating that certain rivets were incorrectly installed in some areas of the skin lap splices during production because they were drilled with a countersink that was too deep." The Discussion section of the NPRM preamble does not reappear in the final rule.

Conclusion

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

Costs of Compliance

There are about 294 airplanes of the affected design in the worldwide fleet. This AD affects about 160 airplanes of U.S. registry. The following tables provide the estimated costs for U.S. operators to comply with either the detailed or HFEC inspections in this AD.

Airplane group	Work hours	Average hourly labor rate	Cost per airplane
Estimated Costs for Detailed Inspection, per Inspection Cycle			
Group 1	7	$80	$560
Group 2	6	80	480
Group 3	12	80	960
Group 4	10	80	800
Estimated Costs for HFEC Inspection, per Inspection Cycle			
Group 1	12	80	960
Group 2	11	80	880
Group 3	20	80	1,600
Group 4	15	80	1,200

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–20–11 Boeing: Amendment 39–14781. Docket No. FAA–2006–24697; Directorate Identifier 2006–NM–045–AD.

Effective Date

(a) This AD becomes effective November 8, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005.

Unsafe Condition

(d) This AD results from a report indicating that certain rivets were incorrectly installed in some areas of the skin lap splices during production because they were drilled with a

countersink that was too deep. We are issuing this AD to detect and correct premature fatigue cracking at certain skin lap splice locations of the fuselage and consequent rapid decompression of the airplane.

Compliance

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

Initial and Repetitive Inspections

(f) Do initial and repetitive detailed or high frequency eddy current inspections for cracking around the rivets at the upper fastener row of the skin lap splice of the fuselage by doing all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005, except as provided by paragraphs (g) and (h) of this AD. Do the inspections at the applicable times specified in Paragraph 1.E., "Compliance," of the service bulletin; except where the service bulletin specifies a compliance time after the original release date of the service bulletin, this AD requires compliance after the effective date of this AD.

Repair

(g) If any crack is found during any inspection required by this AD: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

No Reporting Required

(h) Although Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005, recommends that inspection results be reported to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) The inspections specified in paragraph (f) of this AD are approved as an AMOC to paragraph (h) of AD 2006–11–11, amendment 39–14615 for the inspections of Significant Structural Item (SSI) 53–30–07 and 53–60–07 (fuselage lap splices, left and right upper fastener row) listed in the May 2003 or June 2005 revision of the Boeing 757 Maintenance Planning Data (MPD) Document D622N001–9. This AMOC applies only to the common areas inspected in accordance with Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005. All provisions of AD 2006–11–11 that are not specifically referenced in the above statements remain fully applicable and must be complied with as required by this AD. Operators may revise their FAA-approved maintenance or inspection program with these alternative inspections for common areas.

Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 757–53–0090, dated June 2, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the 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 September 22, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16197 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23145; Directorate Identifier 2000–NM–215–AD; Amendment 39–14777; AD 2006–20–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD currently requires repetitive inspections to detect cracking or failure of the rod ends of the aileron power control actuator (PCA), and corrective actions if necessary. This new AD requires the same repetitive inspections of additional parts at new inspection intervals for certain airplanes; provides new corrective actions; and provides an optional terminating action for the requirements of this AD. This AD results from the issuance of mandatory continuing airworthiness information by the Brazilian airworthiness authority. We are issuing this AD to detect and correct cracking or breaking of the rod ends and connecting fittings of the aileron PCA, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective November 8, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 8, 2006.

The Director of the Federal Register approved the incorporation by reference of EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999, on March 29, 1999 (64 FR 13892, March 23, 1999).

ADDRESSES: You may examine the AD docket on the Internet at http://dms.dot.gov or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

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:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that supersedes AD 99–05–04, amendment 39–11087 (64 FR 13892, March 23, 1999). The existing AD applies to all EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That NPRM was published in the **Federal Register** on December 7, 2005 (70 FR 72726). That NPRM proposed to continue to require repetitive inspections to detect cracking or failure of the rod ends of the aileron power control actuator (PCA), and corrective actions if necessary. That NPRM also proposed to require the same repetitive inspections of additional parts at new inspection intervals for certain airplanes to detect cracking or failure of the rod ends of the aileron power control actuator (PCA); provide new corrective actions; and provide an optional terminating action for the proposed requirements.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Add Airplane Models to the Applicability

ExpressJet requests that we include EMBRAER Model EMB–135 airplanes in the applicability of the NPRM. ExpressJet states that its Model EMB–135ER and -135LR airplanes that are currently subject to an 800-flight hour inspection interval, if subject to the AD, would be subject to a 1,000-flight hour inspection interval. ExpressJet asserts that these airplanes should be subject to the AD because they have the same subject parts.

We do not agree. EMBRAER Model EMB–135 airplanes should not be subject to this AD because they already have the required structural modifications and reinforced aileron PCA-factory incorporated since the first production Model EMB–135 airplane. Regarding the difference in inspection intervals, we have confirmed with EMBRAER that there is no technical reason for the different inspection interval for Model EMB–135 airplanes from that of the airplanes subject to this AD. The different inspection intervals for these airplanes are a result of different maintenance program updating processes (Maintenance Review Board Report updating process versus a design change approval process) used for the different airplane models. EMBRAER has notified us that it is currently in the process of issuing a temporary revision to the EMBRAER EMB–135 Certification Maintenance Requirements that will change the inspection interval for those airplanes from 800 flight hours to 1000 flight hours-the same inspection interval specified in this AD for the subject airplanes. No change to the AD is necessary in this regard.

Request To Reference Parts Manufacturer Approval (PMA) Parts

Modification and Replacement Parts Association (MARPA) requests that the language in the NPRM be changed to identify the new, reinforced parts by part number (P/N). MARPA states that the "new and improved" parts are not identified by P/N in the NPRM and asserts that, if they are identified by P/N in the service bulletin, the mandated installation of a certain P/N in the NPRM "could constitute a conflict with 14 CFR Section 21.303." MARPA also requests that a qualifying statement, "or other FAA-approved part," be appended. MARPA states that this qualification would remove the possible "conflict" by explicitly stating that other qualified PMA parts are permitted.

We infer that MARPA would like the AD to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an alternative method of compliance (AMOC) in order to install an "equivalent" PMA part. Whether an alternative part is "equivalent" in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. Our policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition. Therefore, we do not agree with MARPA's requests and have made no change to the AD in this regard.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), "Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section." Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. We acknowledge that there may be other ways of addressing this issue. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding PMA parts in ADs needs to be revised. However, we consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change to the AD is necessary in this regard.

In response to MARPA's statement regarding a "conflict with FAR 21.303," under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain P/N in an AD is not at variance with section § 21.303.

Request To Address Defective PMA Parts

MARPA notes that the P/Ns cited in the NPRM reflect both original equipment manufacturer (OEM) and PMA parts "approved by identicality under license to Parker Hannifin Company." The commenter believes that the requirements of the AD should apply equally to the OEM and PMA parts.

We do not agree that it is necessary to specify whether an identified part is made by the OEM or by the holder of a PMA. The P/Ns of the affected parts are the information that is necessary to comply with the requirements of this AD and those P/Ns are clearly identified in the AD. Therefore, no change has been made to the final rule in this regard.

Request To Use Serviceable Parts

ExpressJet also asks that we revise the NPRM to allow use of serviceable parts in lieu of new parts for replacement/installation of an aileron PCA. ExpressJet states that it completed the requirements of this AD some time ago and that they used parts that were serviceable, but may not have been new.

We agree. It is our policy to allow operators to use serviceable parts in lieu

of new parts if a serviceable part exists and that part is not subject to the unsafe condition addressed by the AD and will adequately ensure long-term continued operational safety by its use. Therefore, we have changed this final rule to allow use of serviceable parts for the replacement/installation of an aileron PCA.

Request To Add Service Information

ExpressJet asks that we add the service information identified in the table below as acceptable methods of compliance for the requirements of the paragraphs also specified in the table below. ExpressJet notes that the technical content of these service bulletins is the same as in the later revisions already cited in the NPRM as the appropriate sources of service information for the requirements of those paragraphs.

SERVICE INFORMATION REQUESTED FOR INCLUSION IN AD

Add this service bulletin as an acceptable method of compliance—	For the requirements of paragraph(s)—	Approved as an AMOC to—
EMBRAER Service Bulletin 145–27–0062, Change 02, dated September 12, 2000 ..	Paragraph (j)	None.
EMBRAER Service Bulletin 145–57–0019, Change 01, dated March 30, 2000	Paragraphs (k), (l), and (n)(2)	AD 99–05–04.
EMBRAER Service Bulletin 145–27–0061, dated October 19, 1999	Paragraphs (k) and (n)(2)	None.
EMBRAER Service Bulletin 145–27–0061, Change 01, dated October 29, 1999	Paragraphs (k) and (n)(2)	AD 99–05–04.

We agree with ExpressJet's request. We have reviewed these service bulletins and have determined that the technical content of each is essentially the same as those already referenced in the NPRM for the applicable actions. Therefore, we have added these service bulletins to the applicable paragraphs as acceptable methods of compliance for the applicable requirements of this final rule.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 99–05–04).	1	$65	None	$65, per inspection cycle.	661	$42,965, per inspection cycle.
Inspections (new action for airplanes subject to EMBRAER Service Bulletin 145–27–0054).	1	65	None	$65, per inspection cycle.	661	$42,965, per inspection cycle.
Replacing the PCA connecting fittings (new action).	24	65	$19,817	$21,377	661	$14,130,197.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11087 (64 FR 13892, March 23, 1999) and by adding the following new airworthiness directive (AD):

2006–20–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14777. Docket No. FAA–2005–23145; Directorate Identifier 2000–NM–215–AD.

Effective Date

(a) This AD becomes effective November 8, 2006.

Affected ADs

(b) This AD supersedes AD 99–05–04.

Applicability

(c) This AD applies to all EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from the issuance of mandatory continuing airworthiness information by the Brazilian airworthiness authority. We are issuing this AD to detect and correct cracking or breaking of the rod ends and connecting fittings of the aileron power control actuator (PCA), which could result in reduced controllability of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 99–05–04

Initial and Repetitive Inspections

(f) Within 24 hours (1 day) after March 29, 1999 (the effective date of AD 99–05–04), perform a detailed inspection to detect cracking or failure of the rod ends of the PCA at the aileron and wing connection points, in accordance with EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999; or EMBRAER Service Bulletin 145–27–0054, Change 03, dated March 30, 2000, or Change 04, dated February 14, 2005. Repeat the inspection in accordance with the service bulletin thereafter at intervals not to exceed 3 days or 25 flight hours, whichever occurs later, until the initial inspection required by paragraph (h) of this AD is done.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, *etc.*, may be necessary. Surface cleaning and elaborate procedures may be required."

Corrective Actions

(g) If any cracked or failed rod end is detected during any inspection performed in accordance with paragraph (f) of this AD, prior to further flight, replace the aileron PCA with a new or serviceable part having the same part number, in accordance with EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999; or EMBRAER Service Bulletin 145–27–0062, Revision 03, dated December 11, 2002, or Revision 04, dated March 8, 2004. After the effective date of this AD, replace the aileron PCA only with a new or serviceable part that is listed in the "New P/N" column in section 2. "Material—Cost and Availability" of EMBRAER Service Bulletin 145–27–0062, Revision 03, dated December 11, 2002, or Revision 04, dated March 8, 2004. Do the replacement in accordance with the Accomplishment Instructions of the service bulletin. Where the service bulletin specifies to send parts to the parts manufacturer, that action is not required by this AD.

New Requirements of This AD

Repetitive Inspections

(h) At the applicable "Initial Inspection" compliance time in Table 1 of this AD: Do a general visual inspection to detect cracking or failure of the rod ends and connecting fittings in the left- and right-hand PCAs at the aileron and wing structure connection points, in accordance with Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0054, Change 03, dated March 30, 2000, or Change 04, dated February 14, 2005. Repeat the inspection at the applicable "Repeat" interval in Table 1 of this AD. Doing the initial inspection in accordance with paragraph (h) of this AD terminates the repetitive inspections in paragraph (f) of this AD.

TABLE 1.—INITIAL AND REPETITIVE INSPECTION INTERVALS

For airplanes that have PCAs with part number (P/N)—	Do the initial inspection—	Repeat the inspection—
394900–1003 or 394900–1005	Within 3 days after the effective date of this AD.	At intervals not to exceed 25 flight hours or 3 days, whichever occurs later.
394900–1007	Within 14 days after the effective date of this AD.	At intervals not to exceed 100 flight hours or 14 days, whichever occurs later.
418800–1001, 418800–1003, 418800–9003, 418800–1005, 418800–9005, 418800–1007, or 418800–9007; and that have new reinforced PCA fittings installed in accordance with paragraph (k) or (l) of this AD.	Within 500 flight hours after the effective date of this AD.	At intervals not to exceed 500 flight hours.

Note 2: 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."

No Cracked or Failed PCA Rod Ends or Connecting Fittings

(i) If no cracked or failed PCA rod end or connecting fitting is found during any inspection required by paragraph (h) of this AD: Repeat the inspection required by paragraph (h) of this AD at the applicable time specified in Table 1 of this AD.

Corrective Actions for Cracked or Failed Rod Ends

(j) If any cracked or failed rod end is found during any inspection required by paragraph (h) of this AD: Before further flight, replace the aileron PCA with a new or serviceable part as listed in the "New P/N" column in section 2. "Material—Cost and Availability" of EMBRAER Service Bulletin 145–27–0062, Change 02, dated September 12, 2000; Revision 03, dated December 11, 2002; or Revision 04, dated March 8, 2004. Do the replacement in accordance with the Accomplishment Instructions of the service bulletin. Where the service bulletin specifies to send parts to the parts manufacturer, that action is not required by this AD.

Corrective Actions for Cracked or Failed PCA Connecting Fittings

(k) If any cracked or failed PCA connecting fitting at the wing or aileron side is found during any inspection required by paragraph (h) of this AD: Before further flight, replace the PCA connecting fitting with a new, reinforced fitting, in accordance with Part I of the Accomplishment Instructions of

EMBRAER Service Bulletin 145–57–0019, Change 01, dated March 30, 2000, Change 02, dated May 3, 2001, or Change 03, dated February 11, 2004; and EMBRAER Service Bulletin 145–27–0061, dated October 19, 1999, Change 01, dated October 29, 1999, Change 02, dated September 12, 2000, Change 03, dated March 14, 2001, or Revision 04, dated August 11, 2004.

PCA Connecting Fitting Replacement

(l) For airplanes with aileron PCAs with P/N 394900–1003, 394900–1005, 394900–1007, 418800–1001, 418800–1003, 418800–9003, 418800–1005, 418800–9005, 418800–1007, or 418800–9007: Except as required by paragraph (k) of this AD, at the applicable time in paragraphs (l)(1) and (l)(2) of this AD, replace the aileron PCA connecting fittings with new, reinforced fittings, in accordance with Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–57–0019, Change 01, dated March 30, 2000, Change 02, dated May 3, 2001, or Change 03, dated February 11, 2004; and Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0061, Change 02, dated September 12, 2000, Change 03, dated March 14, 2001, or Revision 04, dated August 11, 2004.

(1) For airplanes with PCAs with P/N 394900–1003, 394900–1005, or 394900–1007: At the later of the times in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD.

(i) Before the airplane accumulates 6,000 total flight hours.

(ii) Within 3 days or 25 flight hours after the effective date of this AD, whichever occurs later.

(2) For airplanes with PCAs with P/N 418800–1001, 418800–1003, 418800–9003, 418800–1005, 418800–9005, 418800–1007, or 418800–9007: Before the airplane accumulates 6,000 total flight hours, or within 600 flight hours after the effective date of this AD, whichever occurs later.

(m) For airplanes with PCAs with P/N 418800–1001, 418800–1003, 418800–9003, 418800–1005, 418800–9005, 418800–1007, or 418800–9007: At the applicable time specified in Table 1 of this AD following the replacement specified in paragraph (l) of this AD, do a general visual inspection of the replaced part using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (or its delegated agent). Doing the inspections in accordance with EMBRAER EMB–145 Aircraft Maintenance Manual Task 27–12–01–212–002–A00, "Inspect (Visual Inspection) Aileron PCA Rod Ends/Fitting Lugs for Integrity and General Condition," is one approved method. Thereafter, repeat the inspection at the applicable time specified in Table 1 of this AD.

Optional Terminating Action

(n) Airplanes that meet all conditions in paragraphs (n)(1), (n)(2), (n)(3), and (n)(4) of this AD are not subject to the requirements of paragraphs (f), (h), (i), (j), (k), (l), and (m) of this AD.

(1) The airplane is equipped with new aileron PCAs with P/N 418800–1001, 418800–1003, 418800–9003, 418800–1005, 418800–9005, 418800–1007, or 418800–9007.

(2) The airplane is equipped with new, reinforced PCA fittings installed in production or in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–57–0019, Change 01, dated March 30, 2000, Change 02, dated May 3, 2001, or Change 03, dated February 11, 2004; and EMBRAER Service Bulletin 145–27–0061, dated October 19, 1999, Change 01, dated October 29, 1999, Change 02, dated September 12, 2000, Change 03, dated March 14, 2001, or Revision 04, dated August 11, 2004; as applicable.

(3) The airplane is equipped with an aileron damper with P/N 41012130–103 or 41012130–104 that was installed in production or in accordance with the Accomplishment Instructions of any service bulletin listed in Table 2 of this AD.

TABLE 2.—AILERON DAMPER INSTALLATION SERVICE BULLETINS

EMBRAER service bulletin	Revision level	Date
145–27–0063	Original	March 30, 2000.
145–27–0063	Change 01	October 2, 2000.
145–27–0063	Change 02	March 22, 2002.
145–27–0063	Change 03	May 27, 2004.
145–27–0063	Revision 04	October 13, 2004.
145–27–0063	Revision 05	March 16, 2005.

(4) The general visual inspections for structural integrity of the aileron PCA and the aileron damper terminals and fittings at the wing and aileron sides at intervals not exceeding 1,000 flight hours, established in the EMBRAER Model EMB–145 Maintenance Review Board document, are implemented.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) Alternative methods of compliance approved previously in accordance with AD 99–05–04 are approved as alternative methods of compliance with this AD.

Related Information

(p) Brazilian airworthiness directive 1999–02–01R6, dated June 21, 2004, also addresses the subject of this AD.

Incorporation by Reference

(q) You must use the EMBRAER service bulletins identified in Table 3 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. If accomplished, you must use the EMBRAER service bulletins identified in Table 4 of this AD, to perform the aileron damper installation provided in paragraph (n)(3) of this AD, unless the AD specifies otherwise.

TABLE 3.—REQUIRED SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision/change level	Date
EMBRAER Alert Service Bulletin 145–27-A054	Change 01	February 17, 1999.
EMBRAER Service Bulletin 145–27–0054	Change 03	March 30, 2000.
EMBRAER Service Bulletin 145–27–0054	Change 04	February 14, 2005.
EMBRAER Service Bulletin 145–27–0061	Original	October 19, 1999.
EMBRAER Service Bulletin 145–27–0061	Change 01	October 29, 1999.
EMBRAER Service Bulletin 145–27–0061	Change 02	September 12, 2000.
EMBRAER Service Bulletin 145–27–0061	Change 03	March 14, 2001.
EMBRAER Service Bulletin 145–27–0061	Revision 04	August 11, 2004.

TABLE 3.—REQUIRED SERVICE BULLETINS INCORPORATED BY REFERENCE—Continued

Service bulletin	Revision/change level	Date
EMBRAER Service Bulletin 145–27–0062	Change 02	September 12, 2000.
EMBRAER Service Bulletin 145–27–0062	Revision 03	December 11, 2002.
EMBRAER Service Bulletin 145–27–0062	Revision 04	March 8, 2004.
EMBRAER Service Bulletin 145–57–0019	Change 01	March 30, 2000.
EMBRAER Service Bulletin 145–57–0019	Change 02	May 3, 2001.
EMBRAER Service Bulletin 145–57–0019	Change 03	February 11, 2004.

TABLE 4.—AILERON DAMPER INSTALLATION SERVICE BULLETINS INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision level	Date
145–27–0063	Original	March 30, 2000.
145–27–0063	Change 01	October 2, 2000.
145–27–0063	Change 02	March 22, 2002.
145–27–0063	Change 03	May 27, 2004.
145–27–0063	Revision 04	October 13, 2004.
145–27–0063	Revision 05	March 16, 2005.

EMBRAER Service Bulletin 145–57–0019, Change 03, dated February 11, 2004, contains the following effective pages:

Page No.	Change level shown on page	Date shown on page
1–4	03	February 11, 2004.
5–71	02	May 3, 2001.

EMBRAER Service Bulletin 145–27–0063, Change 01, dated October 2, 2000, contains the following effective pages:

Page No.	Change level shown on page	Date shown on page
1–4	01	October 2, 2000.
5–24	00	March 20, 2000.

(1) The Director of the Federal Register approved the incorporation by reference of the documents identified in Table 5 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 5.—NEW MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision/change level	Date
145–27–0054	Change 03	March 30, 2000.
145–27–0054	Change 04	February 14, 2005.
145–27–0061	Original	October 19, 1999.
145–27–0061	Change 01	October 29, 1999.
145–27–0061	Change 02	September 12, 2000.
145–27–0061	Change 03	March 14, 2001.
145–27–0061	Revision 04	August 11, 2004.
145–27–0062	Change 02	September 12, 2000.
145–27–0062	Revision 03	December 11, 2002.
145–27–0062	Revision 04	March 8, 2004.
145–27–0063	Original	March 30, 2000.
145–27–0063	Change 01	October 2, 2000.
145–27–0063	Change 02	March 22, 2002.
145–27–0063	Change 03	May 27, 2004.
145–27–0063	Revision 04	October 13, 2004.
145–27–0063	Revision 05	March 16, 2005.
145–57–0019	Change 01	March 30, 2000.
145–57–0019	Change 02	May 3, 2001.

TABLE 5.—NEW MATERIAL INCORPORATED BY REFERENCE—Continued

EMBRAER Service Bulletin	Revision/change level	Date
145–57–0019	Change 03	February 11, 2004.

(2) The Director of the Federal Register approved the incorporation by reference of EMBRAER Alert Service Bulletin 145–27–A054, Change 01, dated February 17, 1999, on March 29, 1999 (64 FR 13892, March 23, 1999).

(3) Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the 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 September 15, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

FR Doc. E6–15861 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24256; Directorate Identifier 2006–NM–010–AD; Amendment 39–14782; AD 2006–20–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires replacing the lightning critical clamp bases of the fuel tank vent system with improved clamp bases; and checking the electrical bond of the modified self-bonding mounting clamps and corrective action if necessary. This AD results from an investigation that revealed the aluminum foil strip on the nylon base of the ground clamps can fracture or separate from the base. We are issuing this AD to ensure that the fuel pipes are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, which could result in a fuel tank explosion.

DATES: This AD becomes effective November 8, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 8, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model 717–200 airplanes. That NPRM was published in the **Federal Register** on March 28, 2006 (71 FR 15351). That NPRM proposed to require replacing the lightning critical clamp bases of the fuel tank vent system with improved clamp bases; and checking the electrical bond of the modified self-bonding mounting clamps.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has released Service Bulletin 717–28–0004, Revision 3, dated June 21, 2006. In the NPRM, we referenced Revision 2 of the service bulletin, dated March 11, 2005, as the appropriate source of service information. The procedures in Revision 3 are essentially the same as those in Revision 2. Revision 3 also provides detailed instructions for checking the electrical bond of the modified self-bonding mounting clamps and accomplishing corrective actions if necessary. If the electrical conductivity of the surface is greater than 2.5 milliohms, the corrective actions include surface prepping and applying a chemical conversion coat to the surface of the structural bracket and vent pipe. (The NPRM proposed to repair the electrical bond of the mounting clamp according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, if any electrical bond fails the check. The NPRM specified that Chapter 28–00–00 of the Boeing 717 Aircraft Maintenance Manual and Chapter 20–50–01 of the Boeing 717 Standard Wiring Practices Manual (SWPM) are one approved method.)

We have revised paragraph (f) of this AD to reference Revision 3 as the appropriate source of service information for replacing the lightning critical clamp bases of the fuel tank vent system with improved clamp bases; and checking the electrical bond of the modified self-bonding mounting clamps. We have also revised paragraph (f) to allow operators to either repair any electrical bond in accordance with Revision 3 of the service bulletin, or according to a method approved by the Manager, Los Angeles ACO. In addition, we have added a new paragraph (g) to this AD, giving credit for actions done before the effective date of this AD in accordance with Revision 2. We have also revised the applicability of paragraph (c) of this AD to reference Revision 3. Revision 2 and Revision 3 both apply to Model 717–200 airplanes having fuselage numbers 5002 through 5121 inclusive; therefore, the applicability of this AD has not changed.

Comments

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

Support for the NPRM

Boeing and AirTran Airways support the NPRM.

Request for Clarification

AirTran Airways states that Boeing Service Bulletin 717–28–0004 refers to Chapter 20–50–01 of the Boeing DC, MD, and 717 SWPM, Class "L," for instructions on accomplishing a check of the electrical bonds. AirTran Airways points out that Class "L" is not identified in Chapter 20–50–01 of the SWPM; instead, that chapter provides the maximum direct current (DC) resistance and path for lightning protection. Therefore, AirTran requests clarification of Class "L."

As stated previously, since the NPRM was issued, Boeing has issued Revision 3 of the service bulletin and that revision is cited in this final rule. Revision 3 deletes the reference to Class "L."

Conclusion

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

Costs of Compliance

There are about 120 airplanes of the affected design in the worldwide fleet. This AD affects about 92 airplanes of U.S. registry. The required actions take about 16 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $239 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $139,748, or $1,519 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–20–12 McDonnell Douglas: Amendment 39–14782. Docket No. FAA–2006–24256; Directorate Identifier 2006–NM–010–AD.

Effective Date

(a) This AD becomes effective November 8, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Service Bulletin 717–28–0004, Revision 3, dated June 21, 2006.

Unsafe Condition

(d) This AD results from an investigation that revealed the aluminum foil strip on the nylon base of the ground clamps can fracture or separate from the base. We are issuing this AD to ensure that the fuel pipes are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, which could result in a fuel tank explosion.

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.

Replace the Grounded Clamp Bases

(f) Within 78 months after the effective date of this AD, replace the lightning critical clamp bases of the fuel tank vent system with improved clamp bases, in accordance with Table 1 of Figure 1 of the Accomplishment Instructions of Boeing Service Bulletin 717–28–0004, Revision 3, dated June 21, 2006. Before further flight after the replacement, check the electrical bond of the modified self-bonding mounting clamps in accordance with the Accomplishment Instructions of the service bulletin. If any electrical bond fails the check, before further flight, repair the electrical bond of the mounting clamp in accordance with the service bulletin; or according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Chapter 28–00–00 of the Boeing 717 Aircraft Maintenance Manual and Chapter 20–50–01 of the Boeing DC, MD, and 717 Standard Wiring Practices Manual are one approved method.

Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 717–28–0004, Revision 2, dated March 11, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 717–28–0004, Revision 3, dated June 21, 2006, to perform the actions that are required

by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the 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 September 25, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16199 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

Recording of Major Repairs and Major Alterations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making a minor technical change to aviation repair stations' instructions in Part 43 on how to send required repair and alteration data to the FAA. We are making this change to take advantage of newer and more efficient methods of collecting aviation maintenance data.

EFFECTIVE DATES: Effective on November 3, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Stockslager, AFS–340, Aircraft Maintenance Division, General Aviation and Repair Station Branch, AFS–340, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (717) 774–8271, extension 258; facsimile (717) 774–8327, e-mail *bob.stockslager@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA is amending Part 43 to change the location used to submit FAA Form 337, Major Repair and Alteration. We are changing the location from "local Flight Standards District Office" to the FAA's Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma. The purpose of this change is to centralize the processing of the Form 337 documents and facilitate FAA acceptance of electronic submissions of Form 337 documents in the future. The change does not affect any other requirements of Part 43.

Technical Amendment

The technical amendment will change the location for submitting Form 337 documents.

List of Subjects in 14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ Title 14 of the Code of Federal Regulations (CFR) Part 43 is amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

■ 2. Revise Part 43, Appendix B, paragraph (a)(3) to read as follows:

Appendix B

(a) * * *
(1) * * *
(2) * * *

(3) Forward a copy of that form to the FAA Aircraft Registration Branch in Oklahoma City, Oklahoma, within 48 hours after the aircraft, airframe, aircraft engine, propeller, or appliance is approved for return to service.

* * * * *

Issued in Washington, DC on September 15, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. E6–16405 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–20704; Amendment No. 93–85]

Congestion and Delay Reduction at Chicago O'Hare International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; notice of office of management and budget approval for information collection.

SUMMARY: This document announces the Office of Management and Budget's (OMB) approval of the information collection requirement in the final rule published on August 29, 2006 (FR 71 51382). The sections of the final rule pending approval of this information collection will become effective on the date included in the published final rule; October 29, 2006.

DATES: *Effective Date:* October 29, 2006. Congestion and Delay Reduction at Chicago O'Hare International Airport published in the **Federal Register** on August 29, 2006. FAA received OMB approval for the information collection requirement on August 29, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Wharff, Office of Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3274.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2006, the FAA published the final rule, "Congestion and Delay Reduction at Chicago O'Hare International Airport." In the final rule, the FAA adopts regulations to address persistent delays from overscheduling at O'Hare International Airport. In the **DATES** section of the final rule, we noted that affected parties did not need to comply with the information collection requirements in certain sections of the rule until the Office of Management and Budget (OMB) approved the FAA's request.

In accordance with the Paperwork Reduction Act, OMB approved the FAA's request for new information collection on August 29, 2006, and assigned the information collection OMB Control Number 2120–0716. The control number, granted on the day the final rule was published, was not available in time to include in that publication. The request was approved by OMB without change and expires on August 31, 2009.

49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105, grants authority to the Administrator to publish this notice. The final rule (FR 71 51382) and all sections previously pending OMB information collection approval will be effective October 29, 2006.

Issued in Washington, DC, on September 26, 2006.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. E6–16406 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 5571]

RIN: 1400–AC27

Passport Procedures—Amendment to Restriction of Passports Regulation

AGENCY: State Department.
ACTION: Final rule.

SUMMARY: This final rule amends part 51 at Title 22 of the Code of Federal Regulations to change a ground of denying, revoking or canceling a passport. The final rule amends the existing regulation at section 51.70(a) in Title 22 of the Code of Federal Regulations which requires the Secretary of State to deny a passport to a person who has been certified by the Secretary of Health and Human Services to be in arrears of child support by an amount exceeding $5000 by changing it to $2500 in accordance with Section 7303 of Public Law 109–171, the Deficit Reduction Act of 2005.

EFFECTIVE DATE: October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Consuelo Pachon, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, 2100 Pennsylvania, Avenue, NW., Suite 3000, Washington, DC, telephone number 202–663–2662.

SUPPLEMENTARY INFORMATION: Section 452(k) of the Social Security Act, 42 U.S.C. 652 (the "Act") required that the Secretary of Health and Human Services transmit to the Secretary of State a certification by a State agency in accordance with the requirements of Section 42 U.S.C. 654(31) of the Act of a determination that an individual owes arrearages of child support in an amount exceeding $5000 and requires that the Secretary of State shall upon receipt of such certification by the Secretary of Health and Human Services, refuse to issue a passport to such individual. The Act also authorizes the Secretary to revoke, restrict, or limit a passport previously issued to such an individual. Section 51.70(a) of the passport regulations in Title 22 of the Code of Federal Regulations provides the grounds for denial of passports for other than non-citizenship. Section 51.70(a)(8) to Title 22 of the Code of Federal Regulations requires that the Secretary of State refuse to issue a passport, except one limited for direct return to the United States, to a person who has been certified by the Secretary of Health and Human Services to be in arrears of child support by an amount exceeding $5000.

Section 7303 of the Deficit Reduction Act of 2005, Public Law 109–171, amended Section 452(k)(1) (42 U.S.C. 652(k)(1)) by decreasing the amount of child support arrearage triggering passport denial from $5,000 to $2,500.

Regulatory Findings

Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because this regulation falls under the exception for good cause of 5 U.S.C. 553(b)(3)(B) in that notice to the public is unnecessary. The requirements of Public Law 109–171 are clear, do not allow for agency discretion, and permit no alternative interpretation.

Regulatory Flexibility Act

The DOS, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f). In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Passports and visas.

■ Accordingly, for the reasons set forth in the preamble, the part 51 to Title 22 is amended as follows:

22 CFR PART 51—PASSPORTS

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714, and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp. p. 570; Sec. 236 Pub. L. 106–113, 113 stat. 1501A–430; 18 U.S.C. 1621(a)(2); 42 U.S.C. 652, as amended by Sec. 370 Pub. L. 104–193 and Sec. 7303 Pub. L. 109–171.

■ 2. Section 51.70(a)(8) is amended by removing the phrase "$5,000.00" and adding in its place "$2,500.00".

Dated: September 20, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E6–16387 Filed 10–3–06; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 5570]

Amendment to the International Traffic in Arms Regulations: Partial Lifting of Arms Embargo Against Haiti

AGENCY: Department of State.
ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to reflect

modifications to the U.S. arms embargo against Haiti. The embargo is revised to permit exports of defense articles and services that are destined for security units under the command of the Government of Haiti, or under the command of the United Nations (UN) and UN-authorized missions, and to allow exports of personal protective clothing, including flak jackets and helmets, for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel.

EFFECTIVE DATE: October 4, 2006.

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

- *E-mail: DDTCResponseTeam@state.gov* with an appropriate subject line.
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, 12th Floor, SA–1, Washington, DC 20522–0112.
- *Fax:* 202–261–8199.
- *Hand Delivery or Courier (regular work hours only):* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTENTION: Regulatory Change, SA–1, 12th Floor, 2401 E Street, NW., Washington, DC 20037.

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

FOR FURTHER INFORMATION CONTACT: Ann Ganzer, Office of Defense Trade Controls Policy, Department of State, 12th Floor, SA–1, Washington DC 20522–0112; Telephone 202–663–2792 or FAX 202–261–8199; e-mail: *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change.

SUPPLEMENTARY INFORMATION: On October 9, 1991 the United States suspended all previously issued license and approvals authorizing the export of or other transfers of defense articles and services to Haiti, and instituted a policy of denial for future applications for licenses and other approvals to export or otherwise transfer defense articles and services to Haiti. This step was taken after the overthrow by the Haitian military of the democratically elected government of Haiti. In 1993 the United Nations Security Council imposed an arms embargo against Haiti, and on April 4, 1994 Section 126.1(a) of the International Traffic in Arms Regulations was amended to list Haiti as a country subject to United States embargo. The United Nations lifted its embargo in 1994 but the United States embargo was maintained for foreign policy reasons.

In view of developments in Haiti, to include the inauguration of a democratically elected president, the U.S. embargo is being revised to permit exports of defense articles and services that are destined for security units under the command of the Government of Haiti, or under the command of the United Nations (UN) and UN-authorized missions, as well as exports of personal protective clothing, including flak jackets and helmets, for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel.

The Department of State is amending the International Traffic in Arms Regulations by removing Haiti from the list of countries identified as subject to a United States arms embargo at 22 CFR 126.1(a) and by adding paragraph (j) to 22 CFR 126.1 to clarify the modifications to the policy regarding Haiti.

Regulatory Analysis and Notices

Administrative Procedure Act

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

Regulatory Flexibility Act

This rule does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rule does not require analysis under the Unfunded Mandates Reform Act.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Orders 12372 and 13132

It is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Executive Order 12866

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

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 11958, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; Sec.1225, Pub. L. 108–375.

■ 2. Section 126.1 is amended by revising paragraph (a) to read as follows and adding paragraph (j):

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Libya, North Korea, Syria and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.*, Burma, China, Liberia, Somalia, and Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register.** The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

(j) *Haiti.* It is the policy of the United States to deny licenses, other approvals, exports or imports of defense articles

and defense services, destined for or originating in Haiti. A denial policy will remain for exports or imports of defense articles and defense services destined for or originating in Haiti except, on a case-by-case basis, for supplies of arms and related materials or technical training and assistance intended solely for the support of or use by security units that operate under the command of the Government of Haiti, supplies of arms and related materials for technical training and assistance intended solely for the support of or use by the United Nations or a United Nations-authorized mission, and personal protective clothing, including flak jackets and helmets, for use by personnel from the United Nations and other international organizations, representatives of the media, and development workers and associated personnel. All shipments of arms and related materials consistent with such exemptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

Dated: August 31, 2006.

Robert G. Joseph,

Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. E6–16386 Filed 10–3–06; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 80

[OAR 2003–0079; FRL–8227–6]

RIN 2060–AJ99

Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA issued a final rule on November 29, 2005, which took action on elements of the program to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard)—Phase 2. The preamble contains a discussion of the Clean Air Act's (CAA's) reasonable further progress (RFP) requirements, and this document clarifies the correct citation in the CAA that should have been referenced. Finally, this document is modifying several incorrect citations in Appendix A of the preamble which addresses calculation of RFP targets. This action is needed so States will have the correct version of the Phase 2 rule. The intended effect is to correct the errors in the Phase 2 rule.

EFFECTIVE DATE: This document is effective on October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–01, Research Triangle Park, NC 27711, phone number (919) 541–5550, fax number (919) 541–0824 or by e-mail at *gerth.denise@epa.gov*. or Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–01, Research Triangle Park, NC 27711, phone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at *silvasi.john@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA issued the Phase 2 Rule to Implement the 8-Hour Ozone NAAQS on November 29, 2005 (70 FR 71612). The purpose of this document is to correct four technical errors in the final rule.

Section E.1.b. of the preamble (70 FR 71633; first column) provides information on the RFP requirements for areas classified under subpart 2 as serious and above that had met the 15-percent VOC emission reduction requirement for the 1-hour standard. The preamble stated that such areas would be subject to the RFP requirements of section 172(e) of the CAA. The reference to section 172(e) was inaccurate so we are issuing this correction notice to clarify that such areas would be subject to the RFP requirements of section 172(c) of the CAA. The regulatory text promulgated at 40 CFR 51.910(a)(1)(ii)(A) (70 FR 71700) correctly references section 172(c)(2).

The final set of corrections are being made to language in Method 2, Method 3 and Method 4 of Appendix A (70 FR 71696–71697) which addresses calculation of RFP targets.

The reference in Method 2 to areas covered under 40 CFR 51.910(a)(1)(ii)(C) is incorrect and the correct citation is 40 CFR 51.910(a)(1)(ii)(B). The following is the corrected language:

"For areas covered under 40 CFR 51.910(a)(1)(ii)(B) and that meet an 18-percent VOC emission reduction requirement by 2008 with NO_X substitution allowed, following EPA's NO_X Substitution Guidance:".

The references in Method 3 in paragraphs E and F (71697, column 1) to Steps C, D and E are incorrect. The following is the corrected language:

(E) The target level of VOC and NO_X emissions in 2011 needed to meet the 2011 ROP requirement is any combination of VOC and NO_X reductions from the adjusted inventories calculated in Step **D** that total nine percent. For example, the target level of VOC emissions in 2011 could be a four-percent reduction from the adjusted VOC inventory in Step **D** and a five-percent reduction from the adjusted NO_X inventory in Step **D** * * * [Emphasis Added].

(F) For subsequent * * *. This value is subtracted from the 2011 target level of NO_X emissions calculated in Step **E** to get the adjusted NO_X inventory to be used as the basis for calculating the target level of NO_X emissions in 2014. [Emphasis Added].

The reference Method 4 in paragraph D (71697, second column) to Step E is incorrect. The following is the corrected language:

(D) The target level of VOC and NO_X emissions in 2011 needed to meet the 2011 ROP requirement is any combination of VOC and NO_X reductions from the adjusted inventories calculated in Step **C** that total nine percent * * * [Emphasis Added].

In addition, for all of Appendix A, the term "ROP" should read "RFP." This is consistent with the definition of RFP in the Phase 1 rule (69 FR 23974, footnote 32).

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter.

40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Ozone.

Authority: 42 U.S.C. 7408; 47 U.S.C. 7410; 42 U.S.C. 7501–7511; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7401.

Dated: September 28, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–16377 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0178; FRL–8227–5]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates amendments to the national emission standards for hazardous air pollutants for miscellaneous coating manufacturing. The amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. The amendments extend the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit. The amendments also clarify that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt. These changes clarify applicability of the rule and minimize the compliance burden.

EFFECTIVE DATE: October 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0178. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2003–0178, EPA/DC, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5402; fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS Code*	Examples of regulated entities
Industry ..	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of subpart HHHHH (national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing), as well as in today's amendment to the definitions section. If you have questions regarding the applicability of the amendments to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN policy and guidance page for newly proposed or promulgated rules at *www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 4, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Organization of this Document. The information presented in this preamble is organized as follows:

I. Background

On December 11, 2003, we promulgated NESHAP for miscellaneous coating manufacturing as subpart HHHHH of 40 CFR part 63 (68 FR 69164). Subpart HHHHH applies to the facilitywide collection of equipment used to manufacture coatings. On May 17, 2006 (71 FR 28639), we proposed amendments to the: (1) Definition of the term "coating," (2) compliance date for shared equipment that is part of a process unit group (PUG) developed under the miscellaneous organic chemical manufacturing NESHAP (MON) (40 CFR part 63, subpart FFFF), and (3) exemptions for operations by end users that are related to the application of a pre-manufactured coating.

All equipment that is used to manufacture coatings is subject to 40 CFR part 63, subpart HHHHH. Because the definition of coating at 40 CFR 63.8105 in subpart HHHHH does not specify that coatings are produced only by blending, mixing, diluting, and related formulation operations without chemical synthesis or separation, some products of synthetic organic chemical manufacturing could be considered coatings. This overly broad definition of "coating" expands the applicability of 40 CFR part 63, subpart HHHHH to equipment intended to by covered by 40 CFR part 63, subpart FFFF. The proposed amendments to the definition of coating clarify that products of reaction and separation, such as polymers, resins, and synthetic organic chemicals are not coatings and are not covered by the final rule. In addition, the proposed amendments to the definition of coating clarify that 40 CFR part 63, subpart HHHHH also does not apply to the production of formulation components by chemical synthesis or separation activity if those components are not stored prior to formulation. We proposed these revisions so that the applicability of the final rule accurately and appropriately reflects the coating manufacturing industry and the basis for the maximum achievable control technology (MACT) floor.

The recent extension of the compliance date for 40 CFR part 63, subpart FFFF (see 71 FR 10439, March 1, 2006) raises a timing issue with respect to 40 CFR part 63, subpart FFFF and 40 CFR part 63, subpart HHHHH overlap. The extension for the compliance date for 40 CFR part 63, subpart FFFF results in the compliance date for 40 CFR part 63, subpart HHHHH occurring before the MON compliance date, thus creating a problem for plants with equipment subject to both subparts FFFF and HHHHH of 40 CFR part 63 who opt to develop a PUG. Because we have extended the compliance date for 40 CFR part 63, subpart FFFF, a source that primarily manufactures organic chemicals, but also produces a coating product in the same equipment, would not be able to comply with subparts FFFF and HHHHH of 40 CFR part 63 as EPA intended during the period between the compliance date for 40 CFR part 63, subpart HHHHH (December 11, 2006) and 40 CFR part 63, subpart FFFF (May 10, 2008). Due to the significant amendments to 40 CFR part 63, subpart FFFF, it is unlikely that sources will be able to comply with the revised 40 CFR part 63, subpart FFFF by the compliance date for 40 CFR part 63, subpart HHHHH. Alternatively, if the source was planning to comply with subpart HHHHH by referencing 40 CFR 63.2535(l)(3)(i), it is also unlikely the source would have enough time to design and install interim controls for the coating operations so as to comply with 40 CFR part 63, subpart HHHHH between December 11, 2006 and May 10, 2008. Thus, relying on the presumption that equipment should be regulated according to the standard that effectively applies for a majority of products produced, we proposed amending the final rule to reference 40 CFR part 63, subpart FFFF requirements for a PUG which produces primarily 40 CFR part 63, subpart FFFF products. The proposed amendments also clarify that if the source so chooses, equipment that is part of a PUG in which a MON product is the primary product must comply with the MON by the MON compliance date, not 40 CFR part 63, subpart HHHHH by the subpart HHHHH compliance date.

In section IV.A of the preamble to the final rule, we stated "the final rule does not apply to activities conducted by end users of coating products in preparation for application" (68 FR 69164, December 11, 2003). Although the final rule exempts "affiliated operations" at sources that are subject to surface coating rules, it does not specifically exempt operations at sources that are not subject to another subpart of 40 CFR part 63. Therefore, we proposed adding an exemption in 40 CFR 63.7985(d)(5) for operations by end users who modify a purchased coating prior to application at the same facility. This exemption applies only if the purchased product is already a coating that an end user could apply as purchased, and the modified coating must be applied at the same facility where the modification is conducted.

Two trade associations and three coatings manufacturing companies provided comments on the proposed amendments to the rule. In general, the commenters supported the proposed changes. One commenter also requested changes to the compliance date and the exemption for affiliated operations at sources that are subject to surface coating MACT rules. After consideration of the comments, we are promulgating the amendments as proposed.

II. Response to Comments

A. Compliance Date

Comment: One commenter supported the amendment to clarify the definition of "coating" but also expressed concern that this change could have unanticipated impacts that would make it difficult to achieve compliance by December 11, 2006. According to the commenter, the change is a major modification of the rule because it could affect applicability determinations for some facilities. For example, the commenter suggested the possibility that some facilities currently thinking they are subject to the MON may realize that they have to comply with the Miscellaneous Coating Manufacturing NESHAP. To ensure that facilities have time to review the amendments and make appropriate changes to their compliance plans, the commenter requested that the compliance date for all existing sources under 40 CFR part 63, subpart HHHHH be extended to May 10, 2008.

Response: As noted in the preamble to the proposed amendments, concerns with the definition of "coating" in the final rule were that it was too expansive. It included all materials that are intended to be applied to a substrate, regardless of the production process. The amended definition narrows the scope of the definition, which may reduce the number of operations that are subject to the MON. Any operations that are excluded from the amended Miscellaneous Coating Manufacturing NESHAP will be subject to the MON. Facilities with such operations will have until May 10, 2008, to comply with the Miscellaneous Organic Chemical Manufacturing NESHAP. We are unaware of any materials that are coatings under the amended definition

that would not have been coatings under the definition in the final rule. Thus, we have determined that there is no need to extend the compliance date for existing sources that are subject to the Miscellaneous Coating Manufacturing NESHAP, except for operations that are part of a PUG under the MON as discussed in section I of this preamble.

B. Affiliated Operations

Comment: One commenter supports our position, as stated in the preamble to the proposed amendments, that 40 CFR part 63, subpart HHHHH does not apply to activities conducted by end users of coating products in preparation for application. According to the commenter, these activities cannot be regulated under 40 CFR part 63, subpart HHHHH because they are not coating manufacturing operations and were not part of the MACT analysis for 40 CFR part 63, subpart HHHHH. For the rule to be consistent with this position, the commenter believes 40 CFR 63.7985(d)(2) should exempt "affiliated operations" at all surface coating facilities, not just those at sources that are subject to the surface coating rules in subparts GG, KK, JJJJ, MMMM, and SSSS of 40 CFR part 63. The commenter suggested listing each surface coating category in 40 CFR 63.7985(d)(2).

Response: We decided not to adopt the changes suggested by the commenter. Listing all surface coating categories in 40 CFR 63.7985(d)(2) is unnecessary and impractical. There are three categories of end users to consider: Sources that are subject to 40 CFR part 63 surface coating rules that do not include "affiliated operations" in the affected source, sources that are subject to 40 CFR part 63 surface coating rules that do include "affiliated operations" in the affected source, and sources that are not subject to a 40 CFR part 63 surface coating rule. Operations at end user facilities in two categories are exempted by existing provisions in the rule, and operations at end user facilities in the third category are exempted by the proposed amendments.

First, as the commenter noted, explicit exemptions for affiliated operations, as defined in 40 CFR 63.7985(d)(2), apply to affiliated operations that are located at affected sources under subparts GG, KK, JJJJ, MMMM, and SSSS of 40 CFR part 63. All of these rules lack requirements for affiliated operations, but affiliated operations were considered during development of the rules. Therefore, an exemption was needed in the Miscellaneous Coating Manufacturing NESHAP to avoid a conflict between the decisions made in the development of the five surface coating rules and the applicability of 40 CFR part 63, subpart HHHHH.

Facilities in the second group of end users are also subject to surface coating rules, but the affiliated operations at these facilities are part of the affected sources under the applicable surface coating rule. These affiliated operations are exempt from 40 CFR part 63, subpart HHHHH by 40 CFR 63.7985(a)(4), which specifies that operations are miscellaneous coating manufacturing operations and subject to 40 CFR part 63, subpart HHHHH only if they are not part of an affected source under another subpart of 40 CFR part 63. Therefore, exempting these source categories by listing them in 40 CFR 63.7985(d)(2) would be redundant.

The third group of end users includes all facilities that are not part of a source category that is subject to a surface coating NESHAP. Listing all of these surface coating categories in 40 CFR 63.7985(d)(2) would be impractical because there is no way of knowing all possible categories. Therefore, the proposed exemption in new paragraph (d)(5) of 40 CFR 63.7985 provides a general exemption for all facilities in this group. This new provision exempts operations that modify a purchased coating prior to application at the purchasing facility. Therefore, we have decided to promulgate this proposed amendment without changes.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The final rule amendments impose no new information collection requirements on the industry. The final rule amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor reductions in the information collection burden. Therefore, the Information Collection Request (ICR) has not been revised.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart HHHHH) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0535 (EPA ICR number 2115.01). A copy of the OMB approved ICR may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of the final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

For sources subject to the final rule amendments, the relevant NAICS and associated employee sizes are listed below:

NAICS 32551—Paint and Coatings Manufacturing—500 employees or fewer.
NAICS 32552—Adhesives and Sealants Manufacturing—500 employees or fewer.
NAICS 32591—Printing Ink Manufacturing—500 employees or fewer.

After considering the economic impacts of the final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rule amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor burden reductions for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Therefore, the final rule amendments will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to the Executive Order because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule amendments do not constitute a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final rule amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Further, we have concluded that the final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

During the rulemaking, the EPA conducted searches to identify VCS in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA–HQ–OAR–2003–0178). The final rule amendments do not require the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional VCS for the final rule amendments.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments are effective on October 4, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 28, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart HHHHH—[Amended]

■ 2. Section 63.7985 is amended by revising paragraph (d) introductory text and adding paragraph (d)(5) to read as follows:

§ 63.7985 Am I subject to the requirements of this subpart?

* * * * *

(d) The requirements for miscellaneous coating manufacturing sources in this subpart do not apply to operations described in paragraphs (d)(1) through (5) of this section.

* * * * *

(5) Modifying a purchased coating in preparation for application at the purchasing facility.

■ 3. Section 63.7995 is amended by adding introductory text to read as follows:

§ 63.7995 When do I have to comply with this subpart?

Except as specified in § 63.8090, you must comply with this subpart according to the requirements of this section.

* * * * *

■ 4. Section 63.8090 is amended by adding paragraph (c) to read as follows:

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(c) *Compliance with 40 CFR part 63, subpart FFFF.*

After the compliance dates specified in § 63.7995, an affected source under this subpart HHHHH that includes equipment that is also part of an affected source under 40 CFR part 63, subpart FFFF is deemed in compliance with this subpart HHHHH if all of the conditions specified in paragraphs (c)(1) through (5) of this section are met.

(1) Equipment used for both miscellaneous coating manufacturing operations and as part of a miscellaneous organic chemical manufacturing process unit (MCPU), as defined in § 63.2435, must be part of a process unit group developed in accordance with the provisions in § 63.2535(l).

(2) For the purposes of complying with § 63.2535(l), a miscellaneous coating manufacturing "process unit" consists of all coating manufacturing equipment that is also part of an MCPU in the process unit group. All miscellaneous coating manufacturing operations that are not part of a process unit group must comply with the requirements of this subpart HHHHH.

(3) The primary product for a process unit group that includes miscellaneous coating manufacturing equipment must be organic chemicals as described in § 63.2435(b)(1).

(4) The process unit group must be in compliance with the requirements in 40 CFR part 63, subpart FFFF as specified in § 63.2535(l)(3)(i) no later than the applicable compliance dates specified in § 63.2445.

(5) You must include in the notification of compliance status report required in § 63.8070(d) the records as specified in § 63.2535(l)(1) through (3).

5. Section 63.8105 is amended by revising the definition of the term "coating" in paragraph (g) to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Coating means a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coating does not include materials made in processes where a formulation component is synthesized by chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating,

where the synthesized or separated component is not stored prior to formulation. Typically, coatings include products described by the following North American Industry Classification System (NAICS) codes, code 325510, Paint and Coating Manufacturing, code 325520, Adhesive and Sealant Manufacturing, and code 325910, Ink Manufacturing.

* * * * *

[FR Doc. E6–16407 Filed 10–3–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2006–0158; FRL–8227–4]

RIN 2060–AN29

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2006. Essential use allowances enable a person to obtain controlled class I ODSs as part of an exemption from the regulatory ban on the production and import of these chemicals that became effective as of January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODSs solely for the designated essential purpose. The allocations in this action total 1,002.40 metric tons (MT) of chlorofluorocarbons (CFCs) for use in metered dose inhalers for 2006.

DATES: *Effective Date:* This final rule is effective October 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006–0158. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Kirsten Cappel of the Office of Air and Radiation, Stratospheric Protection Division by regular mail at the Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (6205J) Washington DC 20460; telephone number: 202–343–9556; fax number: 202–343–2338; e-mail address: *cappel.kirsten@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Basis for Allocating Essential Use Allowances

A. What are essential use allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting substances (ODSs) in the U.S. for purposes that have been deemed "essential" by the U.S. Government and by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

The Montreal Protocol is an international agreement aimed at reducing and eliminating the production and consumption [1] of ODSs. The elimination of production and consumption of class I ODSs is accomplished through adherence to phaseout schedules for specific class I ODSs,[2] which include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Montreal Protocol and the Clean Air Act provide exemptions that allow for the continued import and/or production of class I ODSs for specific uses. Under the Montreal Protocol, exemptions may be granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

"(a) That a use of a controlled substance should qualify as 'essential' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality

[1] "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (see section 601(6) of the Clean Air Act).

[2] Class I ozone depleting substances are listed at 40 CFR part 82 subpart A, appendix A.

from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

B. Under what authority does EPA allocate essential use allowances?

Title VI of the Clean Air Act implements the Montreal Protocol for the United States. Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of class I ODSs after the phaseout date for the following essential uses:

(1) Methyl chloroform, "solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available." Under the Act, this exemption was available only until January 1, 2005. Prior to that date, EPA issued methyl chloroform allowances to the U.S. Space Shuttle and Titan Rocket programs.

(2) Medical devices (as defined in section 601(8) of the Act), "if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices." EPA issues allowances to manufacturers of metered dose inhalers (MDIs), which use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary disease.

(3) Aviation safety, for which limited quantities of halon-1211, halon-1301, and halon-2402 may be produced "if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes." Neither EPA nor the Parties have ever granted a request for essential use allowances for halon, because in most cases alternatives are available and because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

The Parties to the Protocol, under Decision XV/8, additionally allow a general exemption for laboratory and analytical uses through December 31, 2007. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an allowance for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: Testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exemption at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

C. What is the process for allocating essential use allowances?

The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel (TEAP) evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination cycle occurs approximately two years before the year in which the allowances would be in effect. The allowances allocated through this final rule were first nominated by the United States in January 2004.

For MDIs, EPA requests information from manufacturers about the number and type of MDIs they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for MDIs in the coming calendar year. Based on FDA's determination, EPA proposes allocations to each eligible entity. Under the Act and the Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA will not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2006, the Parties authorized the United States to allocate up to 1,100 metric tons (MT) of CFCs for essential uses. In a notice of proposed rulemaking published in the **Federal Register** on April 11, 2006 (71 FR 18262), EPA proposed to allocate 1,002.40 MT.

II. Response to Comments

EPA received comments from ten entities on the proposed rule. Two commenters, both members of the general public, did not support an exemption as a general matter, one commenter indicated that his company received too few allowances to adequately protect patient safety, four commenters believed that EPA allocated more allowances than were necessary given the presence of stocks of CFCs in the United States, one commenter indicated that the Agency should not increase one company's allocations at the expense of a second company and should instead increase the total levels of allocations to accommodate any shortfalls. Lastly, one commenter believed that there is no downside to allocating the maximum number of allowances possible because companies only expend those allowances that they need. The comments are addressed in more detail below.

A. EPA Should Not Allocate Essential Use Allowances

One commenter wrote that non-CFC MDIs should be developed. This commenter also expressed a belief that a particular pharmaceutical company, Schering-Plough, should not be permitted to produce CFC MDIs since CFCs are banned. Additionally, this commenter feels that asthma would not be as serious a problem if the U.S. Government stopped burning national forests, parks, and wildlife areas. Another commenter expressed the opinion that the 1,002.40 MT of CFCs are not necessary for the manufacture of MDIs for the treatment of asthma and COPD. According to this commenter, skin cancer is not a suitable alternative to the lack of innovation by the companies that want to use CFCs.

Another commenter also did not believe that Schering-Plough should receive an essential use allocation. The commenter stated that the cornerstone of the temporary essential use process is that production of CFCs for MDIs should be allowed only until companies are able to develop and bring to market adequate non-CFC alternatives for patients. The commenter noted that TEAP has expressed a strong concern that "companies continue to request essential use quantities for CFCs when they also manufacture HFA MDI alternatives for salbutamol," and that Schering Plough has had an approved non-CFC Albuterol MDI, Proventil(r), on the market for a decade. Therefore, the commenter believes that no legal basis exists for allocating essential use CFCs to Schering-Plough.

FDA, in consultation with EPA, has determined that 1,002.40 MT of CFCs are necessary to meet the demand for 2006 MDI manufacturing. As alternatives become available, FDA will be in a position to propose delisting of essential uses in a manner that is protective of patient safety. EPA appreciates the commenter's interest in the causes of asthma and reiterates that

FDA's determination is made in accordance with protecting public health.

Delisting of CFC MDIs will proceed in accordance with the 2002 FDA rule establishing a mechanism for removing essential uses from the list in 21 CFR 2.125(e), published in the **Federal Register** on July 24, 2002 (67 FR 48370) (corrected at 67 FR 49396 and 67 FR 58678). Delisting of albuterol CFC MDIs is addressed specifically in the FDA rule published in the **Federal Register** on April 4, 2006 (70 FR 17168). Under this rule, CFC albuterol MDIs will no longer be essential as of the end of 2008. In addition, FDA is in the process of examining the remaining essential use products to determine if and when they might no longer require an essential use designation. The U.S. is making substantial progress in the phasedown of exempted CFC production. For example, in 2005 the Agency allocated about 1,750 MT of CFCs while in this action for 2006 the Agency is only allocating 1,002.40 MT of CFCs.

Schering-Plough manufactures a product which, as of 2006, is still essential to the U.S. supply of albuterol MDIs for treatment of asthma and COPD. With regard to the comment regarding the TEAP 2005 Progress Report, while the TEAP did express concerns "that companies continue to request essential use quantities for CFCs when they also manufacture [HFA] MDI alternatives for [albuterol]," it nevertheless recommended an essential use exemption for the United States that included CFCs intended for Schering-Plough, and this exemption was approved by the Parties.

B. The Proposed Level of Allocations is Incorrect

One commenter stated that unless EPA increases the essential use allocation for CFC propellants for Armstrong Pharmaceuticals, the only company with idle CFC albuterol production capacity, there will be a shortage of albuterol MDIs as early as June or July of 2006 because a European firm, IVAX, is no longer providing some 12 million units of albuterol inhalers to the U.S. market. Therefore, the commenter requested that the 2006 essential use allowances granted to Armstrong be increased from the proposed 147.50 MT to 347.50 MT. The commenter noted that Medical Technical Options Committee (MTOC) recommended that 180 MT be added to the U.S. allocations for 2006 if CFC MDIs were not imported from Europe in 2006. A second commenter noted that EPA proposed to allocate 1,002.40 MT of CFCs for MDIs whereas the Parties to the Montreal Protocol authorized 1,100 MT and suggested that the 2006 allocations could be raised to the upper limit established in the Decision due to the IVAX situation. This commenter indicated that because in the past MDI producers have only utilized the rights that they felt were critical to meet evolving supply/demand, there is limited risk associated with the full allocation of available rights and notes that because excess CFCs will need to be destroyed, essential use inventories will actually become a financial liability and producers will avoid overproduction of CFC MDIs and excessive purchase of CFC propellant.

One commenter believes that the Agency does not fully understand the restrictions on the availability of stocks of CFCs and that EPA's inaccurate understanding of the matter led to proposed allocations that are too low. They believe that misleading information in the May 2005 TEAP Progress Report on the availability for the sale of GlaxoSmithKline (GSK)'s excess pre-1996 CFC propellant has led FDA and EPA to assume that 605 MT of pre-1996 CFCs held by GSK would be available to all potential users even though GSK will only sell these CFCs to four companies that do not have a need for the material. The commenter also believes that in determining the size of Armstrong's allocation, the Agency assumed that Armstrong could obtain additional CFCs from Schering-Plough.

Two commenters are of the opinion that Armstrong Pharmaceuticals' request for an additional 180 MT of CFCs should be denied and recommended that Armstrong not be granted any CFC allocations, including the 147.50 MT granted in the proposed rulemaking. Based on figures provided by Armstrong Pharmaceuticals, the commenter claims that Armstrong Pharmaceuticals has more than enough CFCs to serve its market share without receiving any allocation for 2006. To support this claim, the commenter stated that Armstrong Pharmaceuticals may manufacture as many as 6.4 million MDIs in 2006, requiring 147 MT of CFCs, which can be met by their stockpile of at least 195 MT of CFCs (based on the difference between the CFCs needed to manufacture 3.29 million MDIs in 2005, and the amount of CFCs purchased by Armstrong in 2005).

One commenter indicated it believed Armstrong Pharmaceuticals made several inaccurate and misleading statements during the April 21, 2006 public hearing. These include the company's assertion, to support its request for an increased 2006 allocation, that the European Community did not allocate any CFCs for the use in the production of albuterol MDIs, and therefore that 21.4 million imported albuterol MDIs were lost to the U.S. market. According to the commenter, IVAX never supplied more than 14 million CFC MDIs to U.S. markets. In addition, the commenter also stated that in late 2005, the European Commission allocated 180 MT of CFCs to IVAX for production of albuterol MDIs to be exported to the U.S. The commenter wished to correct Armstrong Pharmaceuticals' claim that the 605 MT of GSK's pre-1996 CFCs is only available to four companies that no longer require CFCs for MDIs. This commenter states that these companies require CFCs for the production of essential MDIs. A second commenter indicated that GSK did not provide any misleading information concerning the sale of its pre-1996 CFC supply. A third commenter indicated that her company did have a need for, and purchased, CFCs from the GSK pre-1996 stockpile.

EPA believes that the underlying premise of the essential use exemption program is to provide for the continued production and consumption of CFCs needed to ensure patient safety. EPA concurs with the comment that historically, companies have only used the allowances they needed and that production of CFCs in excess of the amount needed by a company would create a liability in that such material would have to be destroyed or used by another essential use. However, allocations are based on determinations of medical necessity.

Since the October 2005 determination by FDA, fewer albuterol CFC MDIs have entered the market because IVAX stopped production. The market has also experienced an increase in the number of HFA MDIs. In making its determination on the amount of CFCs that are medically necessary, FDA looks at factors such as the number of medical device units required to meet patient demand and the amount of CFCs already owned by MDI manufacturers. FDA informs us that they have been closely monitoring the albuterol supply in response to spot shortages, particularly of albuterol CFC MDIs, in late winter and spring of 2006. Based on up-to-date information, there is an adequate supply of albuterol MDIs to meet patient needs in the U.S., as the production capacity for the albuterol HFA MDIs has increased substantially in the first half of 2006 and is expected to continue to increase. While albuterol HFA MDI capacity is expected to continue to increase throughout 2006 and beyond, FDA has not determined a

reduction from the proposed allocations for albuterol MDIs because the projections FDA has heard indicate that there will be a continuing need for albuterol CFC MDIs through all of 2006. FDA is also concerned that some of the projections are not sufficiently reliable to provide a basis for a determination that could result in shortages of this necessary drug, if expectations are not met. Therefore, EPA is not altering the proposed allocation of allowances in this final rule to either increase allocations or decrease them.

EPA was fully aware of the terms regarding the resale of the 605 MT of CFCs previously owned by GSK and was provided with a copy of the contract. EPA shared the terms of the contract with FDA. Further, as EPA has stated previously, both agencies only consider amounts of stocks owned by a given MDI manufacturer in determining the appropriate level of essential use allocation. Therefore, stocks not owned by an MDI manufacturer and future potential commercial arrangements for the sale of such stocks did not affect the allocations.

In regard to concerns about the increased cost, see section II.F of this preamble document on the transition to CFC alternatives.

One commenter argued that EPA should raise the total level of allocations and pointed to the terms of sale of 605 MT of GSK's pre-1996 CFC inventory as a reason to support such an action. This commenter argues that the terms of sale have made it difficult to determine both the level and distribution of CFC allocations, which could cause concern about how fluid the market may be at responding to patients' needs. The commenter further points to the potential that some producers involved in the CFC-to-HFA propellant transition may choose to redirect their production away from CFC-based products, while not releasing unutilized allocation rights to other producers for competitive reasons, thus causing further restrictions on availability of CFCs.

As described above, EPA was fully aware of the restrictions on the resale of the 605 MT formerly owned by GSK. In light of the fact that none of that material may be resold to the essential use companies that manufacture singly moiety albuterol MDIs, the concerns of the commenter regarding the difficulty of determining "both the level and distribution of CFC allocations" and "how fluid the market may be at responding to patients' needs" would not apply to those companies that are receiving exemptions to manufacture single moiety albuterol MDIs because these companies are not permitted to purchase any of the 605 MT to which the commenter is referring. Further, the Agency looks at holdings of CFCs stocks on a manufacturer-by-manufacturer basis. Only those quantities owned by an MDI manufacturer are assessed in determining their overall allocation needs. Thus, if the terms of resale on the GSK material contributed to some difficulties in the fluidity of the CFC propellant market, it should have no bearing on meeting patient demand for MDIs since these materials are excluded from the Agency's assessment until they are owned by an essential use company.

The commenter's second concern that companies that are transitioning to an HFA-based alternative will not be inclined to sell or otherwise make their allowances available to a company that is still producing a product in a CFC format is immaterial. If a company is increasing production of its HFA product and decreasing its CFC product at the same rate, there is no need for a second company to increase its production of CFC product since the total number of units on the market remains the same and is sufficient to protect patient safety.

One commenter stated that EPA must fully consider how the CFC allocations will affect moieties for which there are no alternatives—i.e., that a too-generous allocation for CFC albuterol MDIs that are being phased out could result in a backlash against the remaining essential use products, some of which do not yet have alternatives. The commenter noted that the 2006 allocation is significantly reduced from what EPA or the U.S. Government requested from the international community, yet albuterol comprises the majority of the allocation. To that end, the commenter encourages EPA to consider whether the allocation in the proposed rule takes into account the rapidly changing market for albuterol, noting that the allocation could be based on 6-to-12-month-old information, and asks the Agency to ensure that the moieties that really need CFCs will have CFCs until they approach the reformulation stage. A second commenter concurred with this sentiment and expressed the opinion that it is in the best interests of patients and the environment if the availability of essential use CFCs is preserved for the production of essential MDIs for which alternatives are not yet available but are under development. This second commenter stated that recent albuterol-shortages illustrate the potential disruption to patient care if medication is unavailable and further stated that this risk would be significantly exacerbated in a situation where non-CFC alternatives were not available. Therefore, the commenter recommends that, rather than allocate any volumes for Schering-Plough and Armstrong Pharmaceuticals, EPA hold those volumes for a possible emergency allocation later in the year for those companies not manufacturing single-moiety albuterol MDIs.

EPA and FDA carefully consider the requirements for all essential uses of CFCs, including those non-albuterol MDIs that may continue to be essential uses beyond 2008. The domestic and international consideration of the essentiality of a product is technically based. Most of the 2006 allocation is for albuterol MDIs, consistent with both domestic and international technical reviews. At the time of proposal of the 2006 essential use rule, EPA and FDA were not aware of any current market conditions that would alter the CFC requirements for 2006 essential uses. Further, as described earlier in this document, more recent information has not indicated that there is a significant change in requirements for 2006. With the coming December 2008 ban on the sale of single moiety albuterol CFC MDIs, EPA and FDA anticipate that there may be a rapidly changing market that would affect the 2007 essential use allocation. The Agencies will monitor the situation and make any adjustments that are necessary in the 2007 proposed and final rules.

EPA considered and rejected the commenter's suggestion that EPA hold allowances proposed for Schering-Plough and Armstrong Pharmaceuticals as an emergency reserve for non-albuterol products. EPA received a determination from FDA as to the volume of CFCs required for non-albuterol products and FDA has informed us that that those volumes, along with stocks held by the manufacturers, are sufficient to protect public health. Additional allowances are not medically necessary. Since allowances expire on December 31, 2006, any recommended "emergency" allowances would have to be expended by that date. As previously stated, there is no anticipated shortage of 2006 CFCs for non-albuterol uses. Lastly, comments submitted by companies that have non-albuterol products also indicate that the levels proposed by EPA are sufficient for their 2006 needs. Therefore, EPA does not believe it is necessary to create an emergency reserve for non-albuterol uses with 2006 allowances.

One commenter indicated that in granting allowances, EPA should not increase one company's allocation at the expense of a second company's, but instead any additional allocations should come from the difference

between the amount authorized by the Parties, 1,100 MT, and the amount allocated by the Agency, 1,002.40 MT. This commenter also stated that it is satisfied with its proposed 2006 allocation and that it represents the minimum amount required to meet the market demand for the commenter's product. A second commenter indicated satisfaction with its proposed allocation.

In this action, EPA is not changing the 2006 allocations to individual companies, or in total, from the amounts proposed.

C. Consideration of Stocks of CFCs in the Allocation of Essential Use Allowances

One commenter urged EPA to clarify that "operational supply" encompasses not only the amount of CFCs needed to meet MDI demand for a particular year, but also a "safety stock." This commenter believes a stock of up to 12 months of forward demand is prudent, given that there is now a single supplier in the U.S. and a long lead time associated with revalidating an interrupted plant, and that this is consistent with the view of the Aerosols and Miscellaneous Uses Technical Options Committee (ATOC) expert panel.[3] The commenter states that this view has also been adopted by the TEAP, which recommended to the Parties that companies be permitted to maintain a one-year safety stock of CFCs.[4]

In addition, this commenter suggests that EPA take into account blend requirements and only count stock blended in the needed proportion when calculating the safety stock limit. The commenter notes that the pre-1996 stockpile recently made available by GlaxoSmithKline comprises only CFC–11 and CFC–12, but to the extent that the commenter's company sources its needs from that stock, it will be unusable if it is not supplemented by CFC–114. This commenter also believes that EPA should take into account a company's need to maintain a safety stock for each of its foreign affiliates, as no excess supply is maintained at European production sites or certain other affiliates. The commenter explained that the European Commission takes into account a company's global supply when determining allocations, forcing companies to maintain an operational supply for their European facilities as well as their U.S. facilities. This situation also results in the expenditure of two allowances for each metric ton of CFCs transferred from U.S. to European facilities.

This commenter notes that the conversion of safety stock to "just in time" supply will be made as the end date for the company's transition becomes clearer. Given the cost of destruction and the "point of sale" ban that will render the company's stockpiles of no use when its CFC products are deemed non-essential, this commenter states that it has every incentive to avoid excess stockpiles.

In assessing the amount of new CFC production required to satisfy 2006 essential uses, EPA and FDA applied the terms of Decision XVII/5 including provisions on stocks of CFCs that indicate Parties should allocate such that manufacturers of MDIs maintain no more than a one-year operational supply. FDA's current practice is to first calculate the quantity of CFCs that a manufacturer needs for MDIs in the year in question and then subtract from that quantity any CFC stocks owned by that MDI manufacturer exceeding a one-year operational supply. The remainder, if a positive number, is the quantity of newly produced or imported CFCs needed by that manufacturer. Consistent with the language of Decision XVII/5, FDA has informed EPA that it considers the quantity of CFCs owned by each manufacturer, rather than the total supplies owned by all entities. EPA does not read Decision XVII/5 as endorsing a safety stock in excess of the one-year operational supply specifically mentioned in the Decision.

EPA's proposed allocation did not take the blend of CFCs into account in determining the size of a manufacturer's stocks and the ensuing amount of new CFCs required. EPA does not currently collect data on the specific CFCs that comprise the stocks owned by the MDI manufacturer. EPA agrees that it would be reasonable to take into account the type of CFC needed for MDI production if EPA had such data.

Two commenters indicated that in determining a company's pre-allocation "operational supply," EPA and FDA should count all stocks owned or controlled by a company, including stocks at its production facility, in transit, on order, or stored off-site.

FDA evaluated stocks owned by an MDI manufacturer, regardless of the physical location of the material, in making its determination.

Two commenters stated that in order to effectively implement Decision XVII/5, FDA and EPA should evaluate the level of stockpiles held by companies as of the end of 2005, or as of January 2006. In determining how much a company needs to maintain a "one-year operational supply," EPA and FDA should consider how much a company needs to serve markets during the year and maintain a reasonable safety reserve. The starting point for determining this amount could be the amount of CFCs a company used in the previous year, which could be modified based on the company's circumstances. They further state that EPA should only allocate CFCs to a company if the company's one-year operational supply need is greater than its pre-allocation operational supply. The commenter defines "operational supply need" as the amount the company needs to "serve its markets during the current year" plus a reasonable safety reserve, not to exceed 12 months. The commenter defines "pre-allocation operational supply" as all stocks owned or controlled by a company. Additionally, with regard to the safety net, a 12-month level would be excessive for products with an established phaseout date and where the market is transitioning to non-CFC products. According to one of the commenters, the *U.S. Reporting Accounting Framework* reported that 1,911 MT of CFCs were "on hand" at the end of 2005. With the addition of 1,000 MT of pre-phase out CFCs (398.6 MT reported by the U.S. Accounting Framework and 605 MT made available by GSK), the commenter asserts that almost three times more than the 1,171 MT of CFCs used in 2005 were available for use in MDIs as of the end of 2005.

A third commenter indicated that allowable operational supply should be determined based on the average carried over the course of a year, as opposed to year-end supply, which may appear excessive given the fact that the production of CFCs–11 and –12 occur only during August and this commenter receives a full year's supply at that time.

With regard to the first two commenters' concern on the timing for EPA's determination, the Agency refers readers to section II.D of this preamble on the essential use process. EPA and FDA do not concur with the commenter that a safety net of 12 months is excessive for those products where the market is transitioning. EPA notes that the product in question (albuterol CFC MDI) is not set to be phased out until December 31, 2008. Given that the final transition date is more than a year away, it still makes sense to factor in a "one-year operational supply" at this time. EPA believes this comment may be more pertinent to 2007 and 2008, the last years of the transition.

[3] See "1998 Report of the Aerosols, Sterilants, Miscellaneous Uses, and Carbon Tetrachloride Technical Options Committee," pp. 58–59.

[4] See "UNEP Technology and Economic Assessment Panel April 1998 Report" at p. 16, sec. 1.2.4.

As stated above, FDA first calculates the quantity of CFCs that a manufacturer needs for MDIs in the year in question and then subtracts from that quantity any CFC stocks owned by that manufacturer in excess of a one-year operational supply. FDA evaluates data provided to EPA before and during the rulemaking process which may include stocks data collected midyear, as was the case for the 2006 rulemaking. Those stocks include all materials owned by a manufacturer. Consistent with the language of Decision XVII/5, FDA has informed EPA that it considers the quantity of CFCs owned by each MDI manufacturer, rather than the total supplies owned by all entities. EPA notes that some the stocks one of the commenters points to in the U.S. Accounting Framework are not owned by MDI manufacturers. EPA reminds commenters that the U.S. Accounting Framework captures data at the aggregate level but that allowance allocation determinations are company-specific.

In determining what authorization of new production is "necessary for use in medical devices" under section 604(d)(2) of the CAA, FDA calculates the quantity of CFCs needed to produce an adequate supply of medical devices for use by patients, or other end users, in the relevant year. FDA does not consider the increase of a manufacturer's year-end stock of CFCs to be "necessary" for purposes of section 604(d)(2). FDA has informed EPA that, in accordance with this reading of section 604(d)(2) of the CAA, FDA will not make a determination that any newly produced CFCs are needed, if the resulting allocation would reasonably be expected to result in the MDI manufacturer having a larger stock of CFCs at the end of a relevant year than it had at the beginning of that year. FDA has provided the following examples of its current method of arriving at a determination of the quantities of CFCs needed for a given year:

- Manufacturer A will have 100 MT of CFCs in stocks at the beginning of a year. 50 MT are required to produce the MDIs needed in that year. FDA would determine that no additional CFCs are needed because Manufacturer A will have a one-year supply of CFCs in stock at the end of the year.
- Manufacturer B will have 100 MT of CFCs in stocks at the beginning of a year. 150 MT are required to produce the MDIs needed in that year. FDA would determine that Manufacturer B's allocation should only be 150 MT, as determinations made by FDA are not intended to increase stocks of CFCs through the allocation process.

Both examples assume that the necessary quantities of CFC-containing MDIs remain constant. FDA has informed EPA that as the manufacture, and capacity for manufacture, of non-ODS alternatives, including albuterol HFA MDIs, increases, it takes those increases into consideration in making its determination under section 604(d)(2) of the CAA, and will continue to do so. EPA agrees that FDA's approach to determining the necessary quantity of newly produced or imported CFCs for the manufacture of essential MDIs is reasonable, appropriate, and consistent with relevant provisions of the Parties' Decisions, the Montreal Protocol, and the CAA.

D. Comments on the Rulemaking Process and Timing

Three commenters expressed the opinion that EPA has not adequately supported its proposed essential use allocations for 2006 because EPA could not have adequately taken into account Decision XVII/5 given the timing of the proposed rule. Since Decision XVII/5 was adopted on December 16, 2005 at the 17th MOP, FDA's October 12, 2005 recommendations to EPA could not have taken this Decision into account. While two draft decisions were forwarded to the 17th MOP, neither decision was adopted in full by the MOP, and there is no way FDA could have known which decision would be adopted. Therefore, when FDA made its recommended allocation to EPA, it could not have taken Decision XVII/5 into account. One of the commenters stated that, under this Decision, EPA and FDA are required to factor in any final shipments of CFCs from the now-closed Weert CFC manufacturing plant.

EPA and FDA were aware of Decision XVII/5 at the time of publication of the proposal, and nothing in that decision required a change to the October 2005 FDA determination. Decision XVII/5(2) says: "That Parties * * * shall take into account pre- and post-1996 stocks of controlled substances as described in paragraph 1(b) of decision IV/25, such that no more than a one-year operational supply is maintained by that manufacturer." This language is not in conflict with language in Decision XVI/12 from the previous year which states that Parties "should give due consideration to existing stocks * * * of banked or recycled controlled substances as described in paragraph 1(b) of decision IV/25, with the objective of maintaining no more than one year's operational supply." FDA's determination did pre-date Decision XVII/5, however, it is consistent with Decision XVII/5 as well as Decision XVI/12. Decision XVII/5 contains two details that Decision XVI/12 did not: It refers to stocks at the MDI manufacturing level and clarifies that both pre- and post-1996 stocks should be taken into account. FDA has informed EPA that in making their determination they took both pre-1996 and post-1996 stocks at the MDI manufacturing level into account. Even at the time Decision XVI/12 was taken, the U.S. Government articulated to Parties that the U.S. believed the terms on stocks in the Decision would be applied at the individual company level. The more recent Decision indicated other Parties' concurrence with this approach by specifically including the phrase "by that manufacturer." Thus, the decision taken in December 2005 did not have a substantive impact on FDA's determination made in October 2005.

Four commenters expressed the opinion that EPA did not adequately support its proposed essential use allocations for 2006 because EPA based the proposed 2006 allocations on outdated information. The commenters stated that FDA provided its determination to EPA on October 12, 2005, prior to several significant developments. Two of these commenters believe that EPA and FDA should take into account increases in HFA manufacturing, as well as the uptake of HFA products that began in January 2006 and that has increased from 3 percent to 10 percent of the overall albuterol market. One commenter stated that EPA and FDA should also consider the albuterol shortages that occurred in early 2006.

We understand concerns raised by the commenters that given the 2008 ban on the sale of albuterol CFC MDIs, the market may be rapidly shifting and a snapshot of data six to twelve months prior to an allocation may not represent actual essential needs. In response, EPA notes that the purpose of a comment period is to bring new information and opinions to the Agency's attention and that EPA does look at data that comes to us during the comment period.

While the Agency makes every reasonable effort to use best available data, it is also reasonable to create a process for data gathering and establish a cut off for new information. For example, it would be impossible for EPA to review and consider new data that comes to us the day a rule is signed.

Although there is an established process for gathering information, the Agency does make every reasonable effort to use newer data when feasible.

For example, EPA does evaluate new information that comes to the Agency during the comment period. In the April 11, 2006, proposed rule, the Agency stated "[t]he amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the proposed allocations are either too high or too low."

On the specific matter of revising the allocations in this rule based on more recent stock data, the Agency has data on stock holdings as of the end of 2005 and mid-2006 which is more recent data than was available at the time of publication of the proposed rule. However, these data do not indicate that the October 2005 FDA determination should be revised. Information on individual stock holdings is in the confidential portion of the docket for this rulemaking.

One commenter stated that EPA based its proposed 2006 CFC essential use allocations on information on the number of MDI units produced during 2004 and anticipated to be produced during 2005, which was obtained from CFC MDI manufacturers via CAA section 114 letters. The commenter notes that actual 2005 information is now available both from companies themselves via section 114 requests and from public sources such as IMS data. The commenter also believes that FDA's recommendations to EPA regarding the 2006 essential use allocations were based on outdated and insufficient information. The commenter notes that since FDA's recommended allocation levels were sent to EPA in a letter dated October 12, 2005, FDA did not have complete 2005 production data at hand on which to base its conclusions. Further, any data that FDA used regarding stockpiles prior to the end of the calendar year would have been incomplete, since manufacturers replenished their CFC stockpiles from October through December 2005.

The commenter stated that EPA's reliance on outdated data is not in line with the well-established administrative law principle that "an agency must examine relevant data" in making its determinations and that failure to do this "either is arbitrary decision making or at least prevents a court from finding it non-arbitrary." With respect to EPA's proposed 2006 allocations, according to the commenter, the most pertinent data are from 2005, and the use of 2004 data cannot be justified. Thus, based on administrative law standards, the commenter believes that EPA will have acted in an arbitrary and capricious fashion by not using more recent and relevant data. The commenter recommends, therefore, that EPA send new Section 114 letters to manufacturers requesting current information and that FDA use this information to prepare a new determination of recommended allocations for 2006.

EPA uses a well-established rulemaking process which includes a timeline for collection of data, development of a proposed rule, consideration of comments, and issuance of a final rule. As stated above, EPA agrees that the Agency should use best available data but notes that a reasonable cut off for new information is required in any process. Therefore, best available data in this circumstance may be the information available as of the development of the proposal, as supplemented by public comments and information generated by regulatory reporting requirements in time for consideration during the development of the final rule. For the past ten years of the essential use program, the Agency has based proposed allocations largely on data obtained during the year prior to the allocation.

EPA does evaluate new information that comes to the Agency during the comment period and through periodic reports from regulated entities. New information on stock holdings and HFA MDI market penetration has been made available to EPA and FDA and the October 2005 FDA determination is still appropriate given this new information. The Agency further notes that it placed the 2005 accounting framework (which includes actual use data for 2005) in the public docket for this proposed rulemaking and relied on it in developing the rule.

In the October 2005 letter to EPA, FDA stated that its determination of the amount of CFCs necessary for production of essential MDIs is lower than the total amount requested by manufacturers, and in reaching this estimate, FDA took into account the manufacturers' production of MDIs that used CFCs as a propellant in 2004, the manufacturers' estimated production in 2005 and 2006, the manufacturers' current stockpile levels, and the presence on the market of two albuterol MDIs that do not use CFCs. The letter also informed EPA that FDA based its determination for 2006 on an estimate of the quantity of MDIs using CFCs as a propellant that would be necessary for manufacturers to maintain a 12-month stockpile, consistent with paragraph 3 of Decision XVI/12.

In making allocations, government experts examine projected MDI manufacturing demand for the year in question. One important element in arriving at an estimate of projected demand is to examine information on past demand and production. If EPA or FDA were to see use data in 2005 that was a significant departure from use in the preceding years, such data would be of interest to the agencies and could lead to a different conclusion. There was no 2005 data provided to the EPA that indicate a rapid change in the marketplace beyond the amounts offset by the IVAX production shortfall and therefore no need for FDA to revise its October 2005 determination.

One commenter noted that EPA proposed the amount recommended by FDA without revisions. This commenter urged EPA to revise FDA's recommended allocations to take into account more recent stocks data in determining the 2006 allocations. In a similar context, the commenter also states that EPA and FDA did not apply the terms of Decision XVII/5 at the time of allocation. The commenter notes that Protocol decisions are part of Protocol law and are also U.S. law for purposes of essential use allocations.

The commenter's paraphrase of CAA section 604(d)(2) reverses the EPA and FDA roles. The statute says that EPA "shall authorize," to the extent consistent with the Montreal Protocol, if FDA, in consultation with EPA, determines such authorization to be necessary. Thus, FDA plays the primary role in the determination, although consultation must (and does) occur. Pursuant to the statutory language, EPA does evaluate whether the essential use allowances are consistent with the Montreal Protocol prior to issuing a proposed or final rule. The allowances contained in this final rule are fully consistent with the Protocol and Decisions of the Parties. In addition, as explained above, EPA concurs with FDA's interpretation and application of the phrase "one-year operational supply" as used in Decision XVII/5. In regard to the legal status of decisions of the Parties, EPA refers readers to the recent DC Circuit opinion in *NRDC* v. *EPA*, D.C. Cir. No. 04–1438 (August 29, 2006), as well as to the discussion of the matter in EPA's "Supplemental Brief for the Respondent," filed in that same case. These documents are available in the docket for this action.

One commenter noted that neither FDA nor EPA has explained how they propose to define and implement the key terms in Decision XVII/5. According to the commenter, the lack of definitions in the proposed rulemaking is not only counter to EPA's obligation to provide notice and opportunity for the public to comment, but also means that each company will apply its own definition.

The commenter asserted that EPA's failure to define terms in the proposed rule is not in line with well-established requirements for notice and comment under the Administrative Procedures Act. The commenter also stated that there is no record in the docket to support EPA's claim in the proposed rule that it has "confirmed with FDA that this determination is consistent with Decision XVII/5 * * *" and that neither agency has provided any information on the methodology used to determine that the allocations were in conformity with the Decision.

In reaching its determination, FDA used the plain meaning of the phrase "one-year operational supply." A company's "one-year operational supply" is the amount needed to supply that company's manufacturing operations for one year. One commenter provided a helpful refinement of this concept by pointing out that its operations require a blend of CFCs –11, –12, and –114, and that the presence of only one or two of these compounds does not constitute an operational supply. This comment suggests that the use of the phrase in the proposed rule was sufficiently clear to put commenters on notice of FDA's interpretation. Because the Agency used the plain meaning of the words "one-year operational supply" there was no need to propose a definition for public comment.

One commenter urged EPA to consider making essential use allowance allocations earlier in the year in order to minimize the logistical challenges posed in manufacturing essential MDIs. Since CFC–114 is produced throughout the year, this commenter could make use of its allowances if they were awarded sooner. A second commenter noted that the domestic ruling on essential use allowances for 2006 has been delayed due to extended consideration in the Montreal Protocol negotiation. As a result, the commenter stated the opinion that it is essential that domestic implementation occur at the earliest date to allow for production planning and execution to meet this year's CFC MDI producer needs.

EPA makes every effort to allocate allowances in a timely manner but is affected by factors beyond its control, including the timing of Decisions and the length of the regulatory process itself. A final decision for 2006 allocations was only taken in December 2005.

E. EPA May Not Allocate Allowances to Companies That Fail To Demonstrate Research and Development of Alternatives

One commenter stated that EPA should not allocate essential use CFCs to companies that have not fully complied with Decision VIII/10 by clearly establishing that they are undertaking efforts to develop non-CFC alternatives. The commenter does not believe that Armstrong Pharmaceuticals' research and development program is adequate to achieve results by the December 31, 2008 phaseout deadline. To that end, the commenter recommends that EPA use its section 114 authority to investigate the resource commitment and level of effort of any research and development effort by Armstrong Pharmaceuticals. Unless EPA and FDA conclude that Armstrong's research and development program has a realistic chance of success by December 31, 2008, this commenter believes that Armstrong should be denied an essential use exemption in 2006 on this basis.

The Agency agrees that companies should undertake research efforts to demonstrate a commitment to eliminate the need for an exemption, but disagrees with the premise that such efforts must be completed by December 31, 2008. Finally, EPA refers readers to the extensive discussion on this matter in the 2005 final allocation rule (70 FR 49838–9) and to a 2002 **Federal Register** notice that addresses this topic (67 FR 6355).

F. Transition to Non-CFC Metered Dose Inhalers

Two commenters expressed concern that the allocations may have negative effects on the transition to non-CFC MDIs. One of these commenters recommended that EPA and FDA consider how CFC allocations at this end stage might affect transition at the patient level. According to this commenter, the proposed allocations for 2006 could result in a transition period as long as 30 months in which both CFC and HFA albuterol have a substantial market share. Both commenters stated that a mixed market of CFC and HFA MDIs could have negative health effects on patients. For example, physicians might not know which product their patients are using and patients also may be confused, which could result in adverse health outcomes (*e.g.*, since HFA inhalers may feel different than the CFC one, patients may overuse the HFA device). Both commenters also believe that mixed signals from EPA and FDA about albuterol and new HFA technology could cause confusion and uncertainty. As a result, one of the commenters believes there could be a backlash against the MDI transition, if not about ozone layer protection in general. In light of these factors, one commenter expressed the opinion that the 2006 allocations should send a message consistent with what has been occurring in the market place. Therefore, the commenter urged EPA and FDA to reevaluate the proposed allocation of 700 MT for CFC albuterol MDIs (including 147.7 MT allocated to one company, which according to the commenter is more than twice that company's one-year operational supply) so that those allocations do not impede the transition to non-CFC MDIs.

Another commenter stated that a near-term, achievable transition date in 2005 or early 2006 would have sent a strong message to manufacturers, the medical community, and patients, providing a catalyst for the planning needed to transition to non-CFC MDIs. In addition, given the albuterol shortages reported in early 2006, this commenter stated that the continued and expanded availability of HFA MDIs is critical to ensuring that additional shortages do not occur and that the transition is as seamless as possible for patients.

Both commenters urged EPA and FDA to use the allocation tool to promote a smooth transition during the end stage of the albuterol transition, in which HFA manufacturers are completing the scale-up of their production capacity. One commenter expressed the opinion that facilitating an orderly and transparent transition is consistent with EPA's authority and affirmative legal responsibility under the Clean Air Act to implement the Montreal Protocol. The commenters state that by limiting CFCs to only those uses that are necessary, EPA and FDA would enhance the likelihood of a smooth transition in several ways, which include sending a signal that the U.S. is serious about facilitating a transition away from CFC MDIs; reinforcing the idea that the transition offers positive opportunities for patients and physicians to improve medical outcomes; introducing further certainty about when HFA MDI supplies will be adequate; and preventing the market from sliding back into CFC albuterol, as this would engender confusion and risks to patient health.

FDA previously conducted an extensive regulatory process to determine when albuterol MDIs would no longer be considered essential uses, evaluating the factors raised by the commenters above. FDA concluded in that rulemaking that albuterol CFC MDIs

would no longer be essential at the end of 2008. As of 2006, however, CFC albuterol MDIs continue to appear on FDA's list of essential MDIs and FDA has determined that limited production of new CFCs is necessary to protect patient safety in 2006. Despite the continued need for CFC albuterol MDIs, EPA would note that the transition to CFC-free albuterol MDIs is well underway and the number of HFA MDIs on the market today is evidence of that fact.

III. Allocation of Essential Use Allowances for Calendar Year 2006

With this action, EPA is allocating essential use allowances for calendar year 2006 to the entities listed in Table 1. These allowances are for the production or import of the specified quantity of class I controlled substances solely for the specified essential use.

TABLE 1.—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2006

Company	Chemical	2006 Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	147.50
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	116.50
Inyx (Aventis)	CFC–11 or CFC–12 or CFC–114	106.40
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	556.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	0.00
Wyeth	CFC–11 or CFC–12 or CFC–114	76.00

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA prepared an analysis of the potential costs and benefits related to this action. This analysis is contained in the Agency's Regulatory Impact Analysis (RIA) for the entire Title VI phaseout program (U.S. Environmental Protection Agency, "Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals," July 1992). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. The RIA examined the projected economic costs of a complete phaseout of consumption of ozone-depleting substances, as well as the projected benefits of phased reductions in total emissions of CFCs and other ozone-depleting substances, including essential use CFCs used for metered dose inhalers.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The recordkeeping and reporting requirements included in this action are already included in an existing information collection burden and this action does not make any changes that would affect the burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.8(a) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's final rule on small entities, small entities are defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may conclude that a rule will

not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule provides an otherwise unavailable benefit to those companies that are receiving essential use allowances. We have therefore concluded that this final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phaseout of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phaseout schedule and exemptions established by Congress in Title VI of the Clean Air Act.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only the pharmaceutical companies that requested essential use allowances.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in this regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 4, 2006.

V. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

VI. Effective Date of This Final Rule

Section 553(d) of the Administrative Procedures Act (APA) generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. Today's final rule is issued under section 307(d) of the CAA, which states, "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective October 4, 2006. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Because today's action grants an exemption to the phaseout of production and consumption of CFCs, EPA is making this action effective immediately to ensure continued availability of CFCs for medical devices.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: September 27, 2006.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601,7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

§ 82.8 Grants of essential use allowances and critical use allowances.

(a) * * *

TABLE I.—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2006

Company	Chemical	2006 Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	147.50
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	116.50
Inyx (Aventis)	CFC–11 or CFC–12 or CFC–114	106.4
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	556.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	0.0
Wyeth	CFC–11 or CFC–12 or CFC–114	76.0

* * * * *

[FR Doc. E6–16372 Filed 10–3–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0670; FRL–8092–7]

Flumetsulam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of flumetsulam in or on beans (dry). Dow AgroSciences LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective October 4, 2006. Objections and requests for hearings must be received on or before December 4, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0670. All documents in the docket are listed in the index for the docket. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Phil Errico, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6663; e-mail address: *errico.philip@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, 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 a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0670 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 4, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0670, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 25, 2006 (71 FR 50412) (FRL–8084–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F4851) by Dow AgroSciences LLC, 9330 Zionville Road, Indianapolis, IN 46268–1054. The petition requested that 40 CFR 180.468 be amended by establishing a tolerance for residues of the herbicide flumetsulam, N-(2,6-difluorophenyl)-5-methyl-(1,2,4)-triazolo-[1,5-a]-pyrimidine-2-sulfonamide, in or on beans (dry) at 0.05 parts per million (ppm). That notice included a summary of the petition prepared by the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of flumetsulam on beans (dry) at 0.05 ppm ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by flumetsulam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*, Docket OPP–2004–0317.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable

risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

A summary of the toxicological endpoints for flumetsulam used for human risk assessment is discussed in the docket OPP–2004–0317, for the Notice published in the **Federal Register** of September 24, 2004 (69 FR 57281–57284) (FRL–7680–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.468) for the residues of flumetsulam, in or on a variety of raw agricultural commodities, including field corn grain, fodder, and forage, and soybean. Risk assessments were conducted by EPA to assess dietary exposures from flumetsulam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for flumetsulam; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residue values, 100% crop treated, and the highest estimated chronic drinking water concentration were used.

iii. *Cancer.* Flumetsulam is classified as a "Group E" pesticide (evidence of non-carcinogenicity to humans).

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flumetsulam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of flumetsulam.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentrations in Groundwater (SCI-GROW) models, the estimated environmental concentrations (EECs) of flumetsulam for chronic exposures are estimated to be 0.59 parts per billion (ppb) for surface water and 0.823 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flumetsulam is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to flumetsulam and any other substances and flumetsulam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that flumetsulam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Neither acceptable Developmental Toxicity Studies in rats or rabbits revealed increased susceptibility of the fetus to flumetsulam after *in utero* exposure. Similarly, the results of the Two Generation Reproduction Study did not indicate an increased susceptibility to flumetsulam *in utero* or during postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for Flumetsulam and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children may be reduce to 1X. The FQPA factor is reduced to 1X because:

i. There is a complete toxicity data base for flumetsulam;

ii. Toxicity studies with flumetsulam showed no evidence of increased sensitivity in the young; and

iii. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The exposure assessment was found to

reasonably account for potential exposures because the dietary food exposure assessment utilizes proposed tolerance level residues and 100% crop treatment information for all commodities and the dietary drinking water assessment utilizes values generated by model and associated modeling parameters which are designed to provide health protective, high-end estimates of water concentrations.

E. Aggregate Risks and Determination of Safety

1. *Acute dietary risk.* No acute hazards were identified following a single oral exposure (dose) of flumetsulam. No effects in the developmental toxicity studies in the rabbit or rat were attributed to a single oral exposure during gestation. Therefore, Flumetsulam is not expected to pose an acute risk.

2. *Chronic dietary risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flumetsulam from food will utilize <1% of the cPAD for the U.S. population, all infant and children population subgroups, and women of childbearing age (females 13 - 49 years old). In addition, there is potential for chronic dietary exposure to Flumetsulam in drinking water. After quantitatively incorporating the modeled Estimated Drinking Water Concentrations (EDWC) for surface water (0.59 ppb) and ground water (0.82 ppb), the chronic aggregated dietary exposure does not exceed 1% of the cPAD, and is well below the Agency's Level of Concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Flumetsulam is not registered for use on any sites that would result in residential exposure. Therefore, calculation of short-term aggregate risk is not appropriate.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Flumetsulam is not registered for use on any sites that would result in residential exposure. Therefore, calculation of intermediate-term aggregate risk is not appropriate.

5. *Aggregate cancer risk for U.S. population.* Flumetsulam is classified as a "Group E", i.e., there is evidence of non-carcinogenicity for humans. Consequently, the conduct of a cancer risk assessment is not appropriate.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to Flumetsulam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The available analytical enforcement method (GC/MS method) is considered adequate for tolerance enforcement of Flumetsulam in plant commodities. The method is available, and has been submitted for inclusion in the Pesticide Analytical Manual. In the mean time, the method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for Flumetsulam; therefore, no questions of compatibility with U.S. tolerances exist.

V. Conclusion

Therefore, the tolerance is established for residues of flumetsulam, N-(2,6-difluorophenyl)-5-methyl-(1,2,4)-triazolo-[1,5-a]-pyrimidine-2-sulfonamide, in or on beans (dry) at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 2006.

Lois Rossi,

Director, Registration Division, Office Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.468 is amended by alphabetically adding the commodity to the table in the undesignated text to read as follows:

§180.468 Flumetsulam: tolerances for residues.

* * * * *

Commodity	Parts per million
Beans (dry)	0.05
* *	* * *

[FR Doc. E6–16271 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0368; FRL–8092–5]

Acetic Acid Ethenyl Ester, Polymer with 1-Ethenyl-2-Pyrrolidinone; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone; when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone.

DATES: This regulation is effective October 4, 2006. Objections and requests for hearings must be received on or before December 4, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0368. All documents in the docket are listed in the index for the docket. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, 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 a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this

regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0368 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 4, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0368, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 28, 2006 (71 FR 36792) (FRL–8073–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6E7063) by BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone (CAS No. 25086–89–9). That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply non-toxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d).

1. The polymer, acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 35,000 is greater than 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational, non-dietary exposure was possible. The number average MW of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone is 35,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone conforms to the criteria that identifies a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." EPA does not have, at this time, available data to determine whether acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone and any other substances and acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone does not appear to produce a toxic metabolite as produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone is an endocrine disruptor.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding the following entry in alphabetically order to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* *	* * *
Acetic acid ethenyl ester, polymer with 1-ethenyl-2-pyrrolidinone	25086–89–9
* *	* * *

[FR Doc. E6–16184 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R01–UST–2006–0622; FRL–8226–5]

New Hampshire: Final Approval of Underground Storage Tank Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Hampshire has amended the regulations previously approved by EPA under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has determined that these amendments satisfy all requirements needed for program approval and is approving the State's changes through this immediate final action. EPA is publishing this rule to approve the changes without a prior tentative determination because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this approval during the comment period, the decision to approve New Hampshire's amendments to its underground storage tank (UST) program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to approve the amendments.

DATES: This approval will become effective on December 4, 2006, unless EPA receives adverse written comment by November 3, 2006. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this approval will not take immediate effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–UST–2006–0622, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: hanamoto.susan@epa.gov.*
- *Mail:* Susan Hanamoto, Office of Underground Storage Tanks, EPA Region I, One Congress Street, Suite 1100 (Mail Code: HBO), Boston, MA 02114–2023.
- *Hand Delivery:* Susan Hanamoto, Office of Underground Storage Tanks, EPA Region I, One Congress Street, Suite 1100 (Mail Code: HBO), Boston, MA 02114–2023. Such deliveries are only accepted during the EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–UST–2006–0622. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under Docket ID No. EPA–R01–UST–2006–0622. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Region I Library, One Congress Street, 11th Floor, Boston, MA 02114–2023; business hours Tuesday through Thursday 10 a.m. to 3 p.m., telephone: (617) 918–1990; or the New Hampshire Department of Environmental Services, Public Information Center, 29 Hazen Drive, Concord, NH 03302–0095; Phone Number: (603) 271–2919 or (603) 271–2975; Business hours: 8 a.m. to 4 p.m., Monday–Friday. Records in these dockets are available for inspection and copying during normal business hours.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, Office of Underground Storage Tanks, EPA Region I, One Congress Street, Suite 1100 (Mail Code: HBO), Boston, MA 02114–2023, telephone: (617) 918–1219, e-mail: *hanamoto.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final approval of their UST program under Section 9004 of RCRA, 42 U.S.C. 6991c, must maintain a UST program that is "no less stringent" than the Federal program with respect to the seven requirements set forth at RCRA section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7), that meets the notification requirements of RCRA section 9004(a)(8), and that also provides for adequate enforcement of compliance with UST standards in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a). Either EPA or the approved state may initiate program revision. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is changed or when responsibility for the state program is shifted to a new agency or agencies.

B. What Decisions Have We Made in This Rule?

We conclude that New Hampshire's application to revise its approved program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant New Hampshire approval to operate its UST program with the revisions described in the program approval application.

C. What Is the Effect of Today's Approval Decision?

This action does not impose additional requirements on the regulated community because the regulations for which New Hampshire is being approved by today's action are already effective, and they are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a non-controversial program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this approval, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the approval of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

If we receive comments that oppose only the approval of a particular change to the State UST program, we will withdraw that part of this rule but the approval of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the approval will become effective, and which part is being withdrawn.

F. What Has New Hampshire Previously Been Approved for?

New Hampshire received final approval on June 19, 1991, effective July 19, 1991 (56 FR 28089) to administer the UST program in lieu of the Federal program. On November 2, 1993, effective January 3, 1994 (58 FR 58624), EPA codified the approved New Hampshire program, incorporating by reference the state statutes and regulations that are thereby subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What Changes Are We Approving With Today's Action?

On February 23, 2006, in accordance with 40 CFR 281.52(b), New Hampshire submitted a final complete program revision application seeking approval for its UST program revisions adopted as of February 1, 2005. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that New Hampshire's UST program revision satisfies all of the requirements necessary to qualify for final approval. Therefore, we grant New Hampshire final approval for the following program additions and changes:

Description of required federal element	Implementing state authority
42 U.S.C. 6991c(a)(1) Requirements for maintaining leak detection system, inventory control with tank testing, or other system to identify releases.	Env-Wm 1401.11. Env-Wm 1401.13(e). Env-Wm 1401.16(c–d). Env-Wm 1401.29.

Description of required federal element	Implementing state authority
42 U.S.C. 6991c(a)(2) Requirements for maintaining records of monitoring or leak detection, inventory control or tank testing systems.	Env-Wm 1401.30 (j–m), (r) and(u). Env-Wm 1401.31(b) and (j). Env-Wm 1401.37(a), (c–e), and (g–i). Env-Wm 1401.11. Env-Wm 1401.13(f), (h). Env-Wm 1401.14(b). Env-Wm 1401.25(f). Env-Wm 1401.28(g) and (n). Env-Wm 1401.29(h). Env-Wm 1401.30(g–l), (n–q), and (v). Env-Wm 1401.31(c–f). Env-Wm 1401.32(c–j). Env-Wm 1401.33(f–k). Env-Wm 1401.36(f–h). Env-Wm 1401.37(f). Env-Wm 1401.38(c–d).
42 U.S.C. 6991c(a)(5) Requirements for closure of tanks to prevent future releases	Env-Wm 1401.15(d–g). Env-Wm 1401.17. Env-Wm 1401.18. Env-Wm 1401.28(q). Env-Wm 1401.34(i). Env-Wm 1401.37(b). Env-Wm 1401.38(a).
42 U.S.C. 6991c(a)(7) Standards of performance for new USTs	Env-Wm 1401.21(a–c),(e–h), and (j–k). Env-Wm 1401.22(a–d), (f–g), and (i–j). Env-Wm 1401.23(a). Env-Wm 1401.24. Env-Wm 1401.25(b–n). Env-Wm 1401.26(c) and (d). Env-Wm 1401.27(b). Env-Wm 1401.28. Env-Wm 1401.33(a), (c–e). Env-Wm 1401.36(a–e), and (i). Env-Wm 1401.38(b).

H. Where Are the Revised Rules Different From the Federal Rules?

We consider the following State requirements to be more stringent than the Federal requirements and they are part of New Hampshire's approved program and are Federally enforceable.

• New Hampshire requires the operator of an UST facility to conduct inventory monitoring of each UST and to maintain separate records for each tank and interconnected system, unless the secondary containment of the UST is continuously monitored for both regulated substance and water. Inventory records for single-wall USTs must be recorded on a form obtained from the Department of Environmental Services or another representative motor fuel and bulk storage fuel oil inventory form, which process all of the required data using an automatic tank gauge monitor and computer software. When the Department has determined that inventory monitoring has not been conducted, the owner must perform a tightness test on the UST system within 30 days of the determination.

• New Hampshire requires all regulated metal UST systems, except vent piping, without corrosion protection and all hazardous substance UST systems without secondary containment and leak monitoring to be permanently closed. Any part of an existing single wall UST system that routinely contains a regulated substance without secondary containment and leak monitoring, except for vent piping, must be permanently closed by December 22, 2015.

• New Hampshire requires dispenser sumps installed beneath each dispenser to be provided with continuous leak detection monitoring by the piping sump sensor or equipped with a sump sensor. All piping and dispenser sumps must be maintained free of liquid and debris, be liquid-tight, have liquid-tight penetration fittings for all sump entries, and be able to respond to small accumulations of liquids within the sumps.

• New Hampshire requires spill containment equipment installed with drain valves on UST systems that store gasoline to have the valve replaced annually or be permanently sealed.

• New Hampshire [1401.25(i)] requires all new and replacement overfill protection devices be installed to allow access for inspection of proper operation. By February 1, 2006, [1401.25(j)] all existing UST systems with suction piping and an air eliminator must be equipped with a high level visual and audible alarm or with a device that will automatically and completely shut off flow into the tank when the tank is no more than 95% full and [1401.25(l) and (m)] when product is pumped to a new UST system or any new UST system receives a delivery without a tight fill connection, the new UST systems must only be equipped with a high level visual and audible overfill alarm. [1401.25(k)] All new high level alarms must have both visual and audible alarms, be clearly labeled as a tank overfill alarm, and be clearly visible and audible to the transfer operator.

• New Hampshire requires the certified tank installer to perform a piping pressure test on the vent piping after installation and prior to backfill and to test all installed sumps for tightness. The test results must be provided to the Department and owner at the time of the backfill inspection of the system.

• New Hampshire requires a concrete pad having positive limiting barriers to be constructed and maintained so as to contain a volume of at least five gallons for each dispenser.

• New Hampshire requires new spill containment equipment to be tested for tightness and the results to be submitted

to the Department at the time of inspection and to the owner within 30 days of the test.

- New Hampshire no longer allows groundwater or soil gas vapor monitoring to be installed as a release detection mechanism.
- New Hampshire requires all new metal vent piping to be protected from corrosion.
- New Hampshire requires all new sumps to be tested for tightness within 30 days from installation and the results to be submitted to the Department no later than 30 days after the date of the test.
- New Hampshire requires single wall UST systems, with the exception of vent piping, that discharge, leak, spill, or release a regulated substance to the environment to be permanently closed.

New Hampshire's regulations contain requirements that are broader in scope than the Federal program which are not part of the program being approved by today's action. EPA cannot enforce these broader in scope requirements. Although compliance with these provisions is required under New Hampshire law, they are not Federal RCRA requirements. Such provisions include, but are not limited to, the following:

- New Hampshire's regulations reference compliance with stage I and stage II requirements in Env-Wm 1404, "Volatile Organic Compounds (VOCs): Gasoline Dispensing Facilities, Bulk Gasoline Plants, and Cargo Trucks," when applying for a permit to operate, when transferring gasoline, and when placing back into service temporarily closed UST systems. The Federal RCRA program does not cover stage I and stage II requirements; therefore, in this regard, the New Hampshire program is broader in scope than the Federal Program.
- New Hampshire requires all new UST sites to be located no closer than 500 feet from a public water system well for all gasoline UST systems; at least 400 feet from a public water supply well for all regulated substances except gasoline; at least 250 feet from a non-pubic water supply well for all gasoline UST systems; and at least 75 feet from a non-public water supply well for all regulated substances except gasoline. The Federal RCRA program does not cover the siting of UST systems; therefore, in this regard, the New Hampshire program is broader in scope than the Federal Program.
- New Hampshire does not allow storm water runoff from UST facilities to be discharged to the subsurface, and storm water must not be directed to flow over any tank pad or dispensing pad. The Federal RCRA program does not cover storm water runoff from UST facilities; therefore, in this regard, the New Hampshire program is broader in scope than the Federal Program.

I. Administrative Requirements

This action will only approve state underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by state law (see **SUPPLEMENTARY INFORMATION**). Therefore, this action complies with applicable executive orders and statutory provisions as follows:

1. Executive Order (EO) 12866: Regulatory Planning Review: The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. 2. Paperwork Reduction Act: This action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 3. Regulatory Flexibility Act: After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this action will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act: Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 5. For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 6. Executive Order 13132: Federalism: This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it merely approves state requirements as part of the State UST program without altering the relationship or the distribution of power and responsibilities established by RCRA. 7. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments: This action is not subject to EO 13175 (65 FR 67249, November 9, 2000) because it will not have tribal implications (*i.e.*, substantial direct effects 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). 8. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks: This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it is not based on health or safety risks. 9. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use: This action is not subject to EO 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action as defined in EO 12866. 10. National Technology Transfer and Advancement Act: EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that otherwise meets the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note) does not apply to this action. 11. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. 12. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

Congressional Review Act: EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Nevertheless, to allow time for public comment, this action will be effective on December 4, 2006.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous substances,

Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6991c.

Dated: September 20, 2006.

Robert W. Varney,

Regional Administrator, EPA Region I.

[FR Doc. E6–16375 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[EPA–HQ–SFUND–2003–0022; FRL–8227–7]

RIN 2050–AF02

Administrative Reporting Exemption for Certain Air Releases of NO_X (NO and NO_2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is issuing a final rule that will reduce reporting burdens under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Emergency Planning and Community Right-to-Know Act, also known as Title III of the Superfund Amendments and Reauthorization Act.

In this rule, EPA broadens the existing reporting exemptions for releases that are the result of combustion of less than 1,000 pounds of nitrogen oxide and less than 1,000 pounds of nitrogen dioxide to the air in 24 hours. These may also include emissions from detonation or processes that include both combustion and non-combustion operations, such as nitric acid production. This administrative reporting exemption is protective of human health and the environment and consistent with the Agency's goal to reduce unnecessary reports given that the levels for which the Clean Air Act regulates nitrogen oxides are considerably higher than 10 pounds. In addition, the Agency believes that the information gained through submission of the reports for those exempted releases would not contribute significantly to the data that are already available through the permitting process to the government and the public.

DATES: This final rule is effective on November 3, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2003–0022. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, Regulation and Policy Development Division, Office of Emergency Management, Office of Solid Waste and Emergency Response (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; e-mail address: *beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does This Action Apply to Me?

Type of entity	Examples of affected entities
Industry	Application of this rule should result in a reduction to your reporting burden—persons in charge of vessels or facilities that may release nitrogen oxide (NO) or nitrogen dioxide (NO_2) or both (NO_X) to the air that is the result of combustion and combustion-related activities.
State, Local, or Tribal Governments	State and Tribal Emergency Response Commissions, and Local Emergency Planning Committees.
Federal Government	National Response Center and any Federal agency that may release NO_X.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the criteria in section I.C of this final rule preamble and the applicability criteria in § 302.6 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Outline of This Preamble

The contents of this preamble are listed in the following outline:

I. Introduction

A. What Is the Statutory Authority for This Rulemaking?

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, gives the Federal government broad authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA primarily by reference to other Federal environmental statutes.[1] Section 102 of CERCLA gives the U.S. Environmental Protection Agency (EPA) authority to designate additional hazardous substances. Currently there are 764 CERCLA hazardous substances,[2] exclusive of Radionuclides, F-, K-, and Unlisted Characteristic Hazardous Wastes.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its reportable quantity (RQ) must immediately notify the National Response Center (NRC) of the release. A release is reportable if an RQ or more is released within a 24-hour period (see 40 CFR 302.6). This reporting requirement, among other things, serves as a trigger for informing the Federal government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion.

On March 19, 1998, the Agency issued a final rule (see 63 FR 13459) that broadened the existing reporting exemptions for releases of naturally occurring radionuclides. The Agency relied on CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) as authority to issue regulations governing section 103 reporting requirements, as well as administrative reporting exemptions. These exemptions were granted for releases of hazardous substances that pose little or no risk or to which a Federal response is infeasible or inappropriate (see 63 FR 13461).

In addition to the reporting requirements established pursuant to CERCLA section 103, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*, requires the owner or operator of certain facilities to immediately report releases of CERCLA hazardous substances or any extremely hazardous substances[3] to State and local authorities (see 40 CFR 355.40).

This rule that applies to CERCLA section 103 notification requirements also applies to EPCRA section 304 notification requirements. In part, EPCRA's reporting requirement is designed to effectuate a statutory purpose of informing communities and the public generally about releases from nearby facilities. Notification is to be given to the community emergency coordinator for each Local Emergency Planning Committee (LEPC) for any area likely to be affected by the release, and the State Emergency Response Commission (SERC) of any State likely to be affected by the release. Through this notification, State and local officials can assess whether a response to the release is appropriate, regardless of whether the Federal government intends to respond. EPCRA section 304 notification requirements apply only to releases that have the potential for off-site exposure and that are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and by section 311 of EPCRA.

B. What Is the Background for This Rulemaking?

On December 21, 1999, EPA published interim guidance on the Federally permitted release exemption to section 103 of CERCLA and section 304 of EPCRA (*see* 64 FR 71614). The interim guidance discussed EPA's interpretation of the Federally permitted release exemption as it applies to some air emissions and solicited public comment. The public comment period closed, after several extensions, on April 10, 2000. The Agency received many comments on the interim guidance, including specific questions regarding EPA's interpretation of the Federally permitted release exemption as it applies to NO_X releases. NO_X releases to air are somewhat unique in that, in most cases, Federally enforceable permits (including State issued through delegated programs) are not issued to facilities that release NO_X below a certain threshold. NO_X emissions from these sources are minimal and may not pose a hazard to health or the environment. In its final Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions (67 FR 18899, April 17, 2002), EPA responded to the concern that many small facilities do not have Federally enforceable permits by stating in that **Federal Register** notice that it recognized, "that certain uncontrolled air emissions of nitrogen oxide (NO) and nitrogen dioxide (NO_2) equal to or greater than the ten pound RQ may rarely require a government response." (*See* 67 FR 18904.) When the Agency published that final Guidance, it also extended and expanded an on-going enforcement discretion (Appendix B to that Notice) policy[4] with regard to owners, operators or persons in charge of facilities or vessels for failure to report air releases of NO and NO_2 that would otherwise trigger a reporting obligation under CERCLA section 103 and EPCRA section 304, unless such releases are the result of an accident or malfunction. (*See* 67 FR 18904.)

[1] Other Federal environmental statutes include: Federal Water Pollution Control Act (sections 1321(b)(2)(A), 1317(a)), Solid Waste Disposal Act (section 6921), Clean Air Act (section 7412), and Toxic Substances Control Act (section 2606).

[2] This total includes the P- and U-listed wastes under Subtitle C of the hazardous waste regulations.

[3] Extremely hazardous substances are those listed in Appendix A and B of 40 CFR part 355. EPCRA section 11002(a)(2) required the Agency to publish a list of extremely hazardous substances that is the same list as the list of substances published in November 1985 by EPA in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance."

[4] The enforcement discretion policy was initially announced in a memorandum to EPA Regional Counsels and Division Directors for EPCRA section 304/CERCLA section 103 from Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, dated February 15, 2000.

Since the publication of the Guidance, there has been significant interest and inquiry by industry for the Agency to address the reporting obligations for NO_X releases to air under CERCLA and EPCRA. Most recently, the Office of Management and Budget (OMB) asked the public for their suggested reforms to rules, guidance documents, or paperwork requirements that would reduce unnecessary costs, increase effectiveness, reduce uncertainty, and increase flexibility. In OMB's report to Congress on the costs and benefits to Federal regulation (the "Thompson Report"), one of the nominated reforms meriting priority consideration by EPA was to grant some form of reporting relief for certain releases of NO_X to air. As a result, on October 4, 2005, EPA published a proposed rule (*see* 70 FR 57813) that provided notice of, and requested comments, including any relevant data, on a proposed new administrative reporting exemption from certain notification requirements under CERCLA and EPCRA. The Agency also sought public comment on human health risk assessment data or other relevant data that related to the proposal. The proposed administrative reporting exemption pertained to releases of less than 1,000 pounds of nitrogen oxide and nitrogen dioxide (or collectively referred to as "NO_X" for the proposed rule) to the air in 24 hours that is the result of combustion activities, unless such release is the result of an accident or malfunction. The proposed rule included a requirement that notifications must still be made for accidents or malfunctions that result in the releases of NO_X at the final RQ of 10 pounds or more per 24 hours. The Agency also sought comment on two other options to address the high frequency of release notifications. Those options involved more efficient use of Continuous Release reporting and a complete exemption from the notification requirements under CERCLA and EPCRA.

Twenty-seven comment letters, totaling more than 150 pages, were received on the proposed rule. Of the 27 comment letters, 14 were received from trade organizations, five from power corporations, five from chemical companies, two from organizations representing chemical companies, and one from a not-for-profit organization. This final rule was developed following careful consideration of all issues and concerns raised in public comments. Upon the effective date of this final rule, the Agency is withdrawing the existing enforcement discretion policy, described above, for failure to report air releases of NO and NO_2 that would otherwise trigger a reporting obligation under CERCLA section 103 and EPCRA section 304.

C. Which NO and NO_2 Releases Are Administratively Exempt From the Reporting Requirements?

In this final rule, releases of NO to the air that are the result of combustion and combustion-related activities that are less than 1,000 pounds per 24 hours, and releases of NO_2 to the air that are the result of combustion and combustion-related activities that are less than 1,000 pounds per 24 hours, are administratively exempt from the reporting requirements of CERCLA and EPCRA, established in 40 CFR 302.6 and 40 CFR 355.40, respectively. Some examples of combustion-related activities that are intended to be included in this exemption are emissions from blasting or detonation at construction or mining sites and those NO_X emissions from nitric acid plants.

The existing RQ for both NO and NO_2 is 10 pounds in any 24 hour period. This RQ is easily met by those facilities that release NO_X[5] to the air. This is especially true when the facility processes include combustion and combustion-related activities. For example, an 80 million BTU/hr natural gas boiler will exceed the RQ for NO_X after 2.5 hours of operation. A 120 million BTU/hr coal boiler will exceed the RQ for NO_2 in less than 3 hours of operation and the RQ for NO in less than 2 hours of operation. Small engines also trigger the 10 pound threshold—an 18 horsepower engine running 24 hours will exceed the RQ for NO_X and a 100 horsepower engine will exceed the RQ for NO_X in five hours. Even turning on bakery ovens could trigger the RQ for NO_X when turned on for daily operations.[6]

The exemptions apply only to CERCLA section 103 and EPCRA section 304 reporting requirements and do not apply to the related response and liability provisions. EPA is promulgating the administrative reporting exemption at 1,000 pounds for 24-hours, based on our review of the comments, for three principal reasons. First, the 1,000 pound level represents a 100-fold increase from the regulatory RQ of 10-pounds. This level was one of three (100, 1000, and 5000 pounds) levels suggested by two organizations representing regulated industries[7] as a level for the Agency to raise the RQ for NO and NO_2. Second, the Agency sought public comment on human health risk assessment data or other relevant data that related to its proposed rule, including an alternative for a complete exemption from the notification requirements under CERCLA and EPCRA. Although the Agency received considerable comment, including two specific examples generated from a USEPA screening model that support the desire to (1) raise the administrative exemption to 5,000 pounds or higher or (2) completely exempt NO and NO_2 from CERCLA and EPCRA reporting requirements, the Agency did not receive risk assessment data that would support a different level for the administrative reporting exemption. The Agency also did not receive any human health risk assessment data that would oppose the administrative reporting exemption at the proposed level. Third, EPA believes that a CERCLA response to the release otherwise reportable would be very unlikely and possibly infeasible or inappropriate, because (1) the releases are generally at levels below those that are regulated under the Clean Air Act (CAA), and (2) the Agency has generally not responded to such releases. As a result, the administrative reporting exemptions are intended to allow EPA to focus its resources on the more serious releases and to protect public health and welfare and the environment more effectively and efficiently. At the same time, the exemptions will significantly eliminate unnecessary reporting burdens on persons-in-charge of facilities and vessels that release NO_X during combustion and combustion-related activities.

D. What Are the Changes From the Proposed Rule?

In response to comments, EPA has made one change and clarified a few of the provisions included in the October 4, 2005, proposed rule. Specifically, EPA decided to remove the qualifier to the exemption for releases that are the "result of accidents and malfunctions." As discussed in more detail in Sections

[5] For shorthand purposes only, we use the convention NO_X to refer to both NO and NO_2 either collectively or as individual hazardous substances. However, where regulatory clarity is needed, we will specifically refer to each hazardous substance.

[6] These examples were submitted to the Agency during the comment period for the *Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions* (*see* 67 FR 18899, April 17, 2002) discussed further in the Background section of this preamble. A sample of the letters received related to NO_X and its 10 pound RQ are provided in the Docket for today's final rule (SFUND–2003–0022). All of the letters received pursuant to the Guidance can be found in that Docket (GE–G–1999–029).

[7] The organizations were the National Association of Manufacturers (NAM) and the American Chemistry Council (ACC). The ACC also provided comment to the proposed rule.

II. D.1–3 of this preamble, information submitted by public commenters and assembled by the Agency in response to comments are sufficient to support a finding that the qualifier adds unnecessary confusion that may lead to additional burden and unnecessary reporting. This final rule includes a better explanation as to what is covered under combustion, and clarifies that combustion-related activities (where they cannot be realistically separated) are included within the administrative reporting exemption and that NO_X represents NO and NO_2 interchangeably. See Section II.E. and Section II.F.2, respectively.

II. Response to Comments

EPA's full response to public comments related to this rule are contained in "Responses to Comments on the October 4, 2005 Notice of Proposed Rulemaking on Administrative Reporting Exemptions for Certain Air Releases of NO_X (NO and NO_2)" (Responses to Comments), which is available for inspection at the location described in **ADDRESSES**, above. The following sections provide a summary of the major public comments and EPA's responses.

A. Support for Proposed Reporting Exemptions

All of the 27 comment letters submitted on the October 4, 2005 proposed rule supported to some extent the Agency's effort to reduce reporting burden for releases of NO and NO_2 (NO_X). Of those, 10 specifically supported the proposed administrative reporting exemption at 1,000 pounds.

B. Support for Expanding Continuous Release Reporting in Addition to Proposed Exemption

Seven commenters supported this alternative that would expand continuous release reporting to require that NO_X release notifications be covered under the continuous release reporting scheme. However, those who supported this alternative generally believed that it should be in addition to rather than instead of the administrative reporting exemption. On the other hand, four commenters opposed this alternative primarily because it would be in lieu of the proposed exemption, and would not afford practicable relief.

1. Simplify Continuous Release Initial Release Notification

While commenters both supported and opposed the use of the continuous release reporting mechanism, they all expressed the same concern—that is, the Agency would promulgate the continuous release reporting mechanism in place of the administrative reporting exemption. In this final rule, both the administrative reporting exemption and the continuous release reporting mechanism, as discussed below, can be used to reduce burden.

For those commenters who expressed support for simplifying the continuous release initial release notifications, they argued that EPA must broaden its concepts of "continuous" and "stable in quantity and rate" so as to encompass startup and shutdown operations. EPA believes that in certain instances startup and shutdown operations may meet the definitions of *continuous and stable in quantity and rate*. The definition of *continuous* under 40 CFR 302.8 says that, "a continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes." The definition of *stable in quantity and rate* under 40 CFR 302.8 says that, "a release that is stable in quantity and rate is a release that is predictable and regular in amount and rate of emission." The regulation puts the burden on the person in charge of a facility or vessel to establish a sound basis for qualifying the release for continuous release reporting (see 40 CFR 302.8(d)) and allows that establishment to be made using release data, engineering estimates, knowledge of operating procedures, best professional judgment, or reporting to the NRC for a period sufficient to establish the continuity and stability of the release. Therefore, we believe that the existing rules already provide, in certain instances, for the use of continuous release reporting. To the extent that EPA believes it appropriate to broaden the definition of "continuous" and "stable in quantity and rate," we believe such revision should apply more broadly to all hazardous substances and extremely hazardous substances and would require further rulemaking.

2. Clarify Continuous Release Reporting Requirements

One of the commenters requested that EPA clarify that the exemption also applies to continuous release reporting requirements. The Agency agrees that the administrative reporting exemption for releases of NO and NO_2 would also apply to continuous releases.

C. Support To Increase Level of the Exemption

Eighteen commenters supported this alternative to increase the level of the exemption. In general, five of those commenters supported some number larger than 1,000 pounds, ten commenters supported increasing the combustion-related exemption to 5,000 pounds, and three commenters supported eliminating the 1,000 pound reporting threshold altogether for all combustion-related releases.

1. Support a Number Larger than 1,000 Pounds

Some of the commenters who supported a number larger than 1,000 pounds also proposed another level. One commenter suggested increasing the exemption to a 1,500 pound level arguing that those releases would also be below the 250 tons per year (TPY) that EPA cites in the NPRM. EPA has adopted the RQ levels of 1, 10, 100, 1000, and 5000 pounds originally established pursuant to CWA section 311 (see 40 CFR Part 117). The Agency adopted the CWA five-level system primarily because (1) it has been successfully used pursuant to the CWA, (2) the regulated community is already familiar with these five levels, and (3) it provides a relatively high degree of discrimination among the potential hazards posed by different CERCLA hazardous substances. (See 50 FR 13456, 13465, April 4, 1985.) Therefore, the Agency has decided not to promulgate an administrative reporting exemption level that is inconsistent with its long-established RQ levels.

One commenter suggested that EPA identify additional sources of NO_X emissions to further reduce the notification burden. At this time, EPA is not considering extending the administrative reporting exemption to specific sources. However, EPA wishes to clarify that the release of NO_X during the activity of explosive detonation associated with blasting of hard rock in quarries is, for the purposes of this final rule, a release of NO_X that is the result of combustion and thus, eligible for the administrative reporting exemption promulgated today.

2. Increase RQ for Combustion-Related Exemption to 5,000 Pounds

One of the commenters who supported increasing the combustion-related exemption to 5,000 pounds also believes that EPA should change the basic reportable quantity from 10 pounds. EPA disagrees. Changing the basic reportable quantity (RQ) from 10 pounds to a "reasonable" figure, which the commenter considers to be 5,000 pounds, would be contrary to EPA's long established principle of maintaining one RQ that applies to all media. The RQ for NO and NO_2 was adjusted in the final rule published

April 4, 1985. (See 50 FR 13456.) The RQ for both hazardous substances was adjusted from their statutory RQ to the current 10 pound RQ for each.

3. Raise or Eliminate the 1,000 Pound Reporting Threshold for all Combustion-Related Releases

Three commenters expressly supported eliminating the 1,000 pound reporting threshold for all combustion-related releases. While the Agency acknowledges the commenters' position, we did not receive adequate information (for example, human health and ecological risk assessment) to support extending the administrative reporting exemption beyond the proposed 1,000 pound level.

One commenter[8] used a USEPA air dispersion model to illustrate the impact of an incremental 5,000 pounds of emissions from actual boiler and gas turbine operations to support the position that the administrative reporting exemption should be raised to 5,000 pounds. The commenter provided two examples of NO_2 emissions (NO quickly reacts to NO_2 after release from a combustion stack) and the resulting hourly concentrations (micrograms/meter^3) that illustrate concentration levels that are much less than the California acute reference exposure level (REL) for NO_2.[9] EPA does not consider the risk information addressing these two examples to be sufficient for the requested human health and ecological risk assessments because, (1) commenters were informed in the proposed rule where to obtain guidance on conducting human health and ecological risk assessments,[10] including addressing all current complete site-specific exposure pathways for all affected media, future land use potential, potential exposure pathways, and toxicity information and (2) the example emission scenarios are too narrow given the broader potential release scenarios that this administrative reporting exemption is seeking to include. In addition, releases of NO_X to the environment cause a wide variety of health and environmental impacts that is not addressed by the California REL. For example, ground-level ozone is formed when NO_X and volatile organic compounds (VOCs) react in the presence of sunlight; acid rain is formed when NO_X and sulfur dioxide react with other substances in the air to form acids; and NO_X reacts readily with common organic compounds to form a wide variety of toxic products. Therefore, the Agency believes that the information provided, while informative, is not sufficient to further increase the administrative reporting exemption.

D. Request That the Administrative Reporting Exemption Not Include the Qualifier "Accidents and Malfunctions"

Twenty-five commenters requested that the administrative reporting exemption not include the qualifier for "accidents and malfunctions." Of those 25 commenters, 16 commented specifically on accidents and malfunctions, three commenters requested that EPA also include start-ups, shut-downs, and up-sets, and five sought clarification that flares are control devices and therefore not considered the result of accidents and malfunctions.

1. Accidents and Malfunctions

The Agency received considerable support for either extending the administrative reporting exemption to releases resulting from accidents and malfunctions or limiting the scope of the administrative reporting exemption to combustion devices (eliminating the need to identify accidents and malfunctions), or both. Several commenters were correct in pointing out that no NO_X releases from combustion devices—including many related to accidents and malfunctions-has required any Federal response. In fact, the NO_X release notifications that have required response actions have only been in the category of releases not related to combustion devices, such as in situations where NO_X was released incidental to the actual reason for the response (*i.e.*, fires and explosions). Some commenters argued that the "accidents and malfunctions" qualifier would result in minimal burden reduction, if not an increase in burden. The historical data that the Agency used to predict future releases is populated with release information that was not covered by the enforcement discretion in place since February 15, 2000, essentially releases that were due to "accidents and malfunctions." If the administrative reporting exemption retains the "accident and malfunction" qualifier, then the Agency could receive notification of releases at 1,000 pounds and above that were not reported due to the enforcement discretion in addition to the notifications anticipated based on the historical notification data. This would be inconsistent with the intent of the rulemaking to offer burden reduction.

CERCLA section 103 and EPCRA section 304 notification requirements require the person in charge of the facility or vessel that released the hazardous substance to make the notification to Federal, State, and local authorities. Neither statute nor their implementing regulations differentiate the cause of the release (i.e., whether the release was the result of an accident or malfunction). EPA agrees with the commenters that to require a separate assessment as to whether the release was the result of an accident or malfunction, particularly with respect to releases that result from combustion, may be overly burdensome and not consistent with the intention of either statute, nor the Agency's goal of reducing burden. If a response is not necessary for a release of NO_X from a facility due to normal operations, that assessment should apply even if an accident or malfunction somehow generated the release. EPA also agrees that, particularly with respect to certain combustion activities, it may be a challenge, if not impossible, to determine whether the combustion activities were caused by an accident or malfunction. Thus, protective, over-reporting could result.

A few of the commenters pointed out that EPA has not defined the terms, "accident" and "malfunction" and insist that EPA will need to ensure that any interpretation of what is considered within an "accident" or "malfunction" event is consistent with interpretations in other EPA programs (e.g., air permitting). EPA agrees that inconsistency with other EPA programs has the potential to create unnecessary confusion. Therefore, the definition and interpretation of those terms should remain within the EPA programs where they have a direct regulatory application. The Agency is also not providing a definition of "excess emissions" because it is no longer necessary without the "accident and malfunction" qualifier.

Therefore, EPA will not include the qualifier, "unless such release is the result of an accident or malfunction" to the administrative reporting exemption for releases of NO or NO_2, or both, to air that are the result of combustion or combustion-related activities.

2. Also Include in Exemptions—Start-ups, Shut-downs, and Up-sets

Three commenters requested that the Agency expand the exemption to include additional emissions from combustion sources, such as start-ups,

[8] This commenter's position was endorsed and supported by reference in several other comment letters.

[9] The NO_2 REL of 470 micrograms per cubic meter is a one-hour risk-based number based on respiratory/asthma problems.

[10] *See*, 70 FR 57819, October 4, 2005. Guidance can be found at: *http://www.epa.gov/oswer/riskassessment/superfund_toxicity.htm*.

shut-downs, and upsets. For the reasons described in Section II.D.1 above, EPA will not include the qualifier, "unless such release is the result of an accident or malfunction" to the administrative reporting exemption for releases of NO or NO_2, or both, to air that are the result of combustion or combustion-related activities. To the extent that start-up, shut-down, and up-sets are part of a combustion or combustion-related activity, they are eligible for the administrative reporting exemption, provided such releases are below the 1,000 pound level per 24-hours.

3. Clarify That Flares Are Control Devices—Not Considered Accidents and Malfunctions

Five commenters requested that the Agency clarify that flares are control devices and not considered the result of an accident or malfunction. For the reasons described in Section II.D.1 above, EPA will not include the qualifier, "unless such release is the result of an accident or malfunction" to the administrative reporting exemption for releases of NO or NO_2, or both, to air that are the result of combustion or combustion-related activities. To the extent that flaring is combustion or a combustion-related activity, it is considered within this administrative reporting exemption, provided such releases are below the 1,000 pound level per 24-hours.

E. Requests That the Administrative Reporting Exemption Include Combustion and Non-Combustion Processes

The Agency received three requests to expand the exemption to include combustion processes that also include non-combustion activities and non-combustion processes. One of those comments specifically identified NO_X emissions from nitric acid plants during the production of fertilizer. The commenter described the process of NO_X emissions from nitric acid plants. The process begins with mixing ammonia with air that is combusted across a platinum/rhodium catalyst creating a hot NO_X gas, primarily NO. The hot NO_X gas is cooled through a series of heat exchangers and most of the NO reacts with the excess oxygen to form NO_2. The NO_X gas is then introduced into an absorber, where it interacts with a weak nitric acid solution and fresh water, resulting in a series of over 38 chemical reactions. Generally, NO_2 is absorbed into the aqueous phase and nitric acid is formed. As a result, however, NO and a much smaller fraction of the NO_2 are released back into the gas phase. Since NO is produced in each reaction that makes nitric acid, extra air is introduced into the absorber to convert the NO back to NO_2. The NO_2 is reabsorbed and the cycle repeats itself. Since NO does not appreciably absorb into the aqueous phase, some NO ultimately exits the top of the column. A smaller fraction of NO_2 also exits the column due to the kinetics and equilibrium of the reactions. The gas exiting the absorption column is called tail gas. At this point, most of the gas is again NO. The tail gas is heated and directed through an air pollution control device to control NO_X emissions to the atmosphere. The hot, pressurized tail gas is then sent through an expander to generate power for the air compressor, and finally exits out the stack.

The NO and NO_2, or NO_X released from nitric acid plants is *originally formed as a product of NH_3 combustion.* However, nitric acid plants also produce NO_X from N_2O_4 in an aqueous reaction. Because it is impossible to determine which NO_X emissions result from combustion as opposed to non-combustion processes, all NO_X emissions from nitric acid plants qualify for this NO and NO_2 administrative reporting exemption because all NO and NO_2 released from nitric acid plants originates from combustion activities.

Similarly, where nitric acid is used in the Adipic Acid manufacturing process, there may be releases of NO_X from control devices in an upstream process. To the extent that those control devices are functioning properly and operate as combustion devices, the resulting NO and NO_2 emissions would be covered under this administrative reporting exemption.

Releases of NO and NO_2 from storage tanks are not intended to be administratively exempt from CERCLA and EPCRA notification requirements because there is a higher likelihood that there would be a response to such a release scenario.

F. Interpretation of CERCLA Provisions

Nine commenters provided comment on the interpretation of certain CERCLA provisions.

1. Proposed Exemption Only Applies to Emissions Not Considered Federally Permitted

One commenter requested that EPA clarify that Federally permitted releases are already exempt from reporting under CERCLA section 101(10)(H) and that the 1,000 pound limit applies only to emissions that are not considered Federally permitted releases. We agree with the commenter that the administrative reporting exemption described in this rule applies to those releases that are not otherwise covered by CERCLA or EPCRA exemptions, including those covered by Federal permits defined under CERCLA section 101(10)(H).

2. Clarify that NO_X Represents NO and NO_2 Interchangeably

One commenter recommended that EPA clarify in the rule that the terms NO and NO_2 are interchangeable with the term NO_X. Nitrogen oxide (NO) is a CERCLA hazardous substance with an RQ of 10 pounds per 24 hours. Nitrogen dioxide (NO_2) is also a CERCLA hazardous substance with an RQ of 10 pounds per 24 hours. During combustion and combustion-related activities, NO will quickly form NO_2. The term NO_X was used in the proposed rule and this final rule as short-hand for NO and NO_2. For the purpose of reporting, and the administrative reporting exemption, NO and NO_2 are and continue to be treated as individual hazardous substances. This final rule clarifies that point.

G. Issues Related to Rulemaking Procedure

One commenter requested that EPA conform the preamble to the rules actually proposed to make clear that the administrative reporting exemption affords a 1,000 pound exemption to nitrogen oxide and another 1,000 pound exemption to nitrogen dioxide. The commenter is correct that the administrative reporting exemption affords a 1,000 pound exemption to nitrogen oxide and another 1,000 pound exemption to nitrogen dioxide. The preamble to this final rule has clarified this point.

III. Regulatory Analysis

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." It has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EPA 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. OMB had no comments on this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule represents a reduction in the burden for both industry and the government by administratively exempting the notification requirements for releases of less than 1,000 pounds of NO to the air in 24-hours and less than 1,000 pounds of NO_2 to the air in 24-hours that are the result of combustion and combustion-related activities. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR 302 and 40 CFR 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2050–0046, EPA ICR number 1049.10 and OMB control number 2050–0086, EPA ICR number 1445.06. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

The proposed rule estimated that the annual reporting and recordkeeping burdens associated with the information collected for the episodic release of oil and all hazardous substances (1049.10) to be reduced by approximately 5,449 hours. This represented a reduction in the likely number of respondents from 24,082 to 22,753 a reduction of 1,329 reportable releases. For the purpose of this burden analysis, each reportable episodic release equals one respondent. With respect to the information collected for the continuous release reporting regulation (1445.06) for all hazardous substances, the Agency estimated a reduction of 869 hours, a reduction in the likely number of respondents from 3,145 to 3,009, a reduction of 136 respondents. These estimates remain the same for this final rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 is in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act 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. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule.

This rulemaking will relieve regulatory burden because we propose to eliminate the reporting requirement for certain releases of NO_X to the air. We expect the net reporting and recordkeeping burden associated with reporting releases of NO_X under CERCLA section 103 and EPCRA section 304 to decrease. This reduction in burden will be realized mostly by small businesses because larger businesses usually operate under Federal permits and therefore qualify for the "Federally permitted release" exemption for reporting under CERCLA. 40 CFR 302.6. We have therefore concluded that this final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or

tribal governments or the private sector; promulgation of this rule will result in a burden reduction in the receipt of notifications of the release of NO_X. EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this final rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Thus, this final rule is not subject to the requirements of Sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There are no State and local government bodies that incur direct compliance costs by this rulemaking. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. No States or local governments commented on the proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the final rule is not subject to Executive Order 13045 because it is not an "economically significant" rule as defined by Executive Order 12866. EPA also expects the rule does not have a disproportionate effect on children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after it is published in the **Federal Register**.

List of Subjects

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemicals, Disaster assistance, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 28, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

■ 2. Section 302.6 is amended by adding paragraph (e) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(e) The following releases are exempt from the notification requirements of this section:

(1) Releases in amounts less than 1,000 pounds per 24 hours of nitrogen oxide to the air which are the result of combustion and combustion-related activities.

(2) Releases in amounts less than 1,000 pounds per 24 hours of nitrogen dioxide to the air which are the result of combustion and combustion-related activities.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

■ 4. Section 355.40 is amended by adding paragraph (a)(2)(vii) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(1) * * *

(2) * * *

(vii) Any release in amounts less than 1,000 pounds per 24 hours of:

(A) Nitrogen oxide (NO) to the air that is the result of combustion and combustion-related activities.

(B) Nitrogen dioxide (NO_2) to the air that is the result of combustion and combustion-related activities.

* * * * *

[FR Doc. E6–16379 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1310

RIN 0970-AC26

Head Start Program

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Final rule.

SUMMARY: This rule finalizes the provisions of the proposed rule published on May 30, 2006 and responds to public comments received as a result of the proposed rule. This final rule authorizes approval of annual waivers, under certain circumstances, from two provisions in the current Head Start transportation regulation (45 CFR part 1310): the requirement that each child be seated in a child restraint system while the vehicle is in motion, and the requirement that each bus have at least one bus monitor on board at all times. Waivers would be granted when the Head Start or Early Head Start grantee demonstrates that compliance with the requirement(s) for which the waiver is being sought will result in a significant disruption to the Head Start program or the Early Head Start program and that waiving the requirement(s) is in the best interest of the children involved. The rule also revises the definition of child restraint system in the regulation to remove the reference to weight which now conflicts with Federal Motor Vehicle Safety Standards.

The regulation also reflects new effective dates for Sec. 1310.12(a) and 1310.22(a) on the required use of school buses or allowable alternate vehicles and the required availability of such vehicles adapted for use of children with disabilities, as the result of enactment of Section 224 of Public Law 109–149 and Section 7012 of Public Law 109–234.

DATES: These rules are effective November 3, 2006, except sections 1310.12(a) and 1310.22(a) will become effective on December 30, 2006.

FOR FURTHER INFORMATION CONTACT: Office of Head Start, (202) 205–8572. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION: On December 30, 2005, the President signed Public Law 109–149 that included in Section 223 a provision that authorizes the Secretary of Health and Human Services to waive the requirements of regulations promulgated under the Head Start Act (42 U.S.C. 9831 *et seq.*) pertaining to child restraint systems or vehicle monitors if the Head Start or Early Head Start agency can demonstrate that compliance with such requirements will result in a significant disruption to the program and that waiving the requirement is in the best interest of the children involved. This waiver authority extends until September 30, 2006, or the date of the enactment of a statute that authorizes appropriations for fiscal year 2006 to carry out the Head Start Act, whichever date is earlier. These rules extend that limited waiver authority indefinitely.

The rules also provide a definition of child restraint system in the Head Start regulations and codify in Head Start regulations the requirement for use of child restraint systems to reflect current National Highway Traffic Safety Administration (NHTSA) regulations with flexibility to address any future changes in the weight range covered by the NHTSA regulation. NHTSA is the agency responsible for issuing Federal Motor Vehicle Safety Standards.

Finally, this rule removes provisions added to section 1310.11(b) and 1310.15(c) that are no longer necessary.

Summary Description of Regulatory Provisions and Response to Comments

Section 1310.2—Waiver Authority and Effective Dates

The regulation provides that effective November 1, 2006, "good cause" for a waiver would exist when adherence to a requirement of the Head Start transportation regulation would create a safety hazard in the circumstances faced by the agency, or when compliance with requirements related to child restraint systems (Secs. 1310.11 and 1310.15(a)) or the use of bus monitors (Sec. 1310.15(c) would result in a significant disruption to the program and the grantee can demonstrate that waiving such requirements would be in the best interest of the children involved. We are using the November 1, 2006 effective date in recognition that the rule will not be effective until 30 days from the date of publication. In concert with this change, we also have added language under this section to ensure there is no gap in waivers between October 1, 2006 and November 1, 2006. That language provides that the responsible HHS official has authority to grant waivers related to child restraint systems or bus monitors that are retroactive to October 1, 2006, during the period from November 1, 2006 to October 30, 2007.

The regulation also provides that the effective date of Sec. 1310.12(a) and 1310.22(a) is December 30, 2006, reflecting enactment of section 224 of Public Law 109–149, which provides Sec. 1310.12(a) of title 45 of the Code of Federal Regulations (October 1, 2004) shall not be effective until June 30, 2006, or 60 days after the date of the enactment of a statute that authorizes appropriations for fiscal year 2006 to carry out the Head Start Act, whichever date is earlier and subsequent enactment of Section 7021 of Public

Law 109–234 extending this date to December 30, 2006. In the event that legislation authorizing appropriations for fiscal year 2006 to carry out the Head Start Act is enacted before November 1, 2006, a notice informing the public of the new effective date of Sections 1310.2(b)(1), 1310.12(a) and 1310.22(a) will be issued.

Comment

The majority of comments received support the proposed change to the waiver authority in the regulation. Concern over the potential loss of partnerships with school districts and loss of transportation services for Head Start children were cited. Over half expressed support for both bus monitor and child restraint system exceptions. Some letters also described circumstances related to one or the other of the two requirements. Two commenters suggested waivers be approved for a period exceeding one year. In addition, two Head Start agencies perceived the notice of proposed rulemaking as an opportunity to submit waiver requests.

Three respondents indicated opposition to this change and instead suggested eliminating the requirements altogether so waivers would not be needed. One commenter opposed the change based on concern that Head Start will lose ground in providing safe transportation services for young children. A child restraint manufacturer described the availability of child restraint systems designed specifically for use in school buses and allowable alternate vehicles that have come on the market in recent years. One commenter expressed opposition based on concerns for safety, and another said that enough time had passed since the regulation was published that all Head Start programs should now achieve full compliance.

Response

The Administration for Children and Families (ACF) agrees with the need to provide a mechanism to address the circumstances faced by individual agencies related to these issues. We maintain the view that the opportunity for annual authority is necessary in order to keep pace with changes in the industry and communities. Agencies should continuously seek opportunities to come into full compliance with support from the Head Start Technical Assistance system. In response to the concern that more agencies will request waivers, agencies will be required to justify their requests and to describe efforts toward achieving the goal of full compliance. ACF will publish guidance related to the circumstances under which requests will be approved. Except in extreme circumstances, those agencies who have previously achieved compliance will not receive waivers.

Definition and Requirements for Use of Child Restraint Systems

This rule also updates and modifies the definition and requirements for use of child restraint systems. Under Sec. 1310.3, child restraint systems were defined as any device designed to restrain, seat, or position children who weigh 50 pounds or less which meets the requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213. NHTSA raised the weight threshold required for approved restraint systems and is considering raising it yet again. In addition, discussions with NHTSA indicate it would be advisable to include a formal reference to the exclusion of Type I lap belts for small children. Therefore, we have updated the definition by removing the weight requirement in order to stay current with FMVSS 49 CFR 571.213, and to exclude Type I lap belts as defined at 49 CFR 571.209.

Comment

One commenter expressed appreciation for the Agency's proposal to update the definition of child restraint system, but notes the improved definition will have no meaningful effect if the restraint requirements are waived. One Head Start grantee expressed dismay that funding is not available to purchase more child restraint systems for those children who will require these systems under the revised definition.

Response

We believe the improved definition will impact Head Start transportation services and therefore children positively. Agencies that may request and receive waiver approvals are the exception. With regard to funding, we wish to note that since publication of the NPRM a considerable amount of money has been made available to grantees to achieve compliance with the child restraint system and bus monitor requirements.

Section 1310.15—Operation of Vehicles

Section 1310.15(a) of the regulation provided that each agency providing transportation services must ensure that, "On a vehicle equipped for use of such devices, any child weighing 50 pounds or less is seated in a child restraint system appropriate to the height and weight of the child while the vehicle is in motion." As discussed earlier, the definition of the child restraint system is being updated to reflect FMVSS standards. We have removed the poundage reference to include those few Head Start and Early Head Start children who are over 50 pounds in the requirement for the use of child restraint systems to coincide with the change in the definition.

We also revised the language to clarify that the regulation applies only to Head Start and Early Head Start enrolled children. In coordinated transportation arrangements, questions have been raised regarding the applicability of this requirement to other children on the bus. Under the regulation, the language requires that any child enrolled in a Head Start or Early Head Start program is seated in a child restraint system appropriate to the child's height and weight while the vehicle is in motion.

Comments related to the definition of child restraint systems are included above. No comments were received related to applicability of this requirement to other children on the bus.

Paperwork Reduction Act

This rulemaking contains information collection requirements in Sec. 1310.2. This summary includes the estimated costs and assumptions for the paperwork requirements related to this rule. These paperwork requirements have been approved by the Office of Management and Budget under number 0970–0260 as required by 44 U.S.C. 3507(a)(1)(c) of the Paperwork Reduction Act of 1995, as amended. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The Office of Head Start estimates that the rule would create 275 burden hours annually. Table 1 summarizes burden hours by grantee. We estimate 1 hour of paperwork burden for each Head Start grantee requesting a transportation waiver. The waiver request would include basic information to identify the grantee, the nature of the transportation services provided and the children affected and a justification for the waiver. We estimate receiving no more than 275 requests resulting in a total burden of 275 hours.

TABLE 1.—TOTAL BURDEN HOURS OF RULE

[Summary of All Burden Hours, by Provision, for Grantees]

Provision	Annualized burden hours
1310.2	275
Total	275

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The regulation provides flexibility and clarity in meeting the Head Start transportation requirements while ensuring child safety.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be revised to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distribution of powers and responsibilities among the various levels of government." This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subjects in 45 CFR Part 1310

Head Start, Reporting and recordkeeping requirements, Transportation.

(Catalog of Federal Domestic Assistance Program Number 93.600, Head Start)

Wade F. Horn,

Assistant Secretary for Children and Families.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ For the reasons discussed, title 45 CFR chapter XIII is amended as follows:

PART 1310—HEAD START TRANSPORTATION

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 42 U.S.C. 9801 et seq.

■ 2. Revise paragraphs (b) and (c) of § 1310.2 to read as follows:

§ 1310.2 Applicability.

* * * * *

(b)(1) Sections 1310.12(a) and 1310.22(a) of this part are effective December 20, 2006.

(2) This paragraph and paragraph (c) of this section, the definition of child restraint systems in Sec. 1310.3 of this part, and Sec. 1310.15(a) are effective November 1, 2006. Sections 1310.11 and 1310.15(c) of this part are effective June 21, 2004. Section 1310.12(b) of this part is effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective November 1, 2006, an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. "Good cause" for a waiver will exist when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the agency, or when compliance with requirements related to child restraint systems (Secs. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) will result in a significant disruption to the program and the agency demonstrates that waiving such requirements is in the best interest of the children involved. In addition, the responsible HHS official shall have the authority to grant waivers of the requirements related to child restraint systems (Sec. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) that are retroactive to October 1, 2006 during the period from November 1, 2006 to October 30, 2007. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

■ 2. Revise the definition of Child Restraint System in § 1310.3 to read as follows:

§ 310.3 Definitions.

* * * * *

Child Restraint System means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

* * * * *

§ 1310.11 [Amended]

■ 3. In § 1310.11, remove and reserve paragraph (b).

§ 1310.12 [Amended]

■ 4. In § 1310.12, amend paragraph (a) by removing "January 18, 2006" and adding "December 30, 2006" in its place.

■ 5. Revise § 1310.15(a) and (c) to read as follows:

§ 1310.15 Operation of vehicles.

* * * * *

(a) Effective October 1, 2006, on a vehicle equipped for use of such devices, any child enrolled in a Head Start or Early Head Start program is seated in a child restraint system appropriate to the child's height and weight while the vehicle is in motion.

(b) * * *

(c) Effective June 21, 2004, there is at least one bus monitor on board at all

times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

* * * * *

§ 1310.22 [Amended]

■ 6. In § 1310.22, amend paragraph (a) by removing "January 18, 2006" and adding "December 30, 2006" in its place.

[FR Doc. E6–16488 Filed 10–3–06; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 205 and 225

RIN 0750–AF33

Defense Federal Acquisition Regulation Supplement; Berry Amendment Notification Requirement (DFARS Case 2006–D006)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006. Section 833(a) requires the posting of a notice on the FedBizOps Internet site, when certain exceptions to domestic source requirements apply to an acquisition.

DATES: *Effective Date:* October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D006, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D006 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS policy to implement Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 833(a) amended 10 U.S.C. 2533a to add a requirement for the posting of a notice on the FedBizOps Internet site, within 7 days after award of a contract exceeding the simplified acquisition threshold, for the acquisition of (1) certain clothing, fiber, yarn, or fabric items, when DoD has determined that adequate domestic items are not available; or (2) chemical warfare protective clothing, when an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to a notification requirement that is performed by the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 833(a) of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 833(a) requires DoD to post a notice on the FedBizOps Internet site, within 7 days after award of a contract exceeding the simplified acquisition threshold, when DoD has applied one of certain exceptions to domestic source requirements with respect to the contract. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 205 and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 205 and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 205 and 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 2. Section 205.301 is added to read as follows:

205.301 General.

(a)(S–70) *Synopsis of exceptions to domestic source requirements.*

(i) In accordance with 10 U.S.C. 2533a(k), contracting officers also must synopsize through the GPE, awards exceeding the simplified acquisition threshold that are for the acquisition of any clothing, fiber, yarn, or fabric items described in 225.7002–1(a)(2) through (10), if—

(A) The Secretary concerned has determined that domestic items are not available, in accordance with 225.7002–2(b); or

(B) The acquisition is for chemical warfare protective clothing, and the contracting officer has determined that an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country, in accordance with 225.7002–2(p).

(ii) The synopsis must be submitted in sufficient time to permit its publication

not later than 7 days after contract award.

(iii) In addition to the information otherwise required in a synopsis of contract award, the synopsis must include one of the following statements as applicable:

(A) "The exception at DFARS 225.7002–2(b) applies to this acquisition, because the Secretary concerned has determined that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in satisfactory quality and sufficient quantity at U.S. market prices."

(B) "The exception at DFARS 225.7002–2(p) applies to this acquisition, because the contracting officer has determined that this acquisition of chemical warfare protective clothing furthers an agreement with a qualifying country identified in DFARS 225.872."

PART 225—FOREIGN ACQUISITION

■ 3. Section 225.7002–1 is amended in the introductory text by revising the first sentence to read as follows:

225.7002–1 Restrictions.

The following restrictions implement 10 U.S.C. 2533a (the "Berry Amendment"). * * *

■ 4. Section 225.7002–2 is amended by revising paragraphs (b) and (n) and by adding paragraph (p) to read as follows:

225.7002–2 Exceptions.

* * * * *

(b) Acquisitions of any of the items in 225.7002–1(a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

* * * * *

(n) Acquisitions of specialty metals when the acquisition furthers an agreement with a qualifying country (see 225.872).

* * * * *

(p) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See 225.872 and the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

[FR Doc. E6–16402 Filed 10–3–06; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 216, and 225

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update reference numbers and correct typographical errors.

DATES: *Effective Date:* October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *Section 207.103.* Corrects typographical errors.
- *Section 216.603–4.* Updates a cross-reference.
- *Section 225.7013.* Updates a statutory reference.

List of Subjects in 48 CFR Parts 207, 216, and 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 207, 216, and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 216, and 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

207.103 [Amended]

■ 2. Section 207.103 is amended as follows:

■ a. In paragraph (h) introductory text by removing "SCMA" and adding in its place "SMCA"; and

■ b. In paragraph (h)(ii), in the second sentence, by removing "SCMA" and adding in its place "SMCA".

PART 216—TYPES OF CONTRACTS

216.603–4 [Amended]

■ 3. Section 216.603–4 is amended in paragraph (b)(2) by removing "217.7406" and adding in its place "217.7405".

PART 225—FOREIGN ACQUISITION

■ 4. Section 225.7013 is amended by revising the introductory text to read as follows:

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309 and 7310—

* * * * *

[FR Doc. E6–16400 Filed 10–3–06; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 234

RIN 0750–AF38

Defense Federal Acquisition Regulation Supplement; Acquisition of Major Weapon Systems as Commercial Items (DFARS Case 2006–D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2006. Section 803 places limitations on the acquisition of a major weapon system as a commercial item.

DATES: *Effective date*: October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D012, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D012 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Bill Sain, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal

Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS policy to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 803 permits the treatment or acquisition of a major weapon system as a commercial item only if (1) the Secretary of Defense determines that the major weapon system meets the definition of commercial item at 41 U.S.C. 403(12) and such treatment is necessary to meet national security objectives; and (2) the congressional defense committees are notified at least 30 days before such treatment or acquisition occurs.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to internal DoD considerations regarding the acquisition of major weapons systems. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D012.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 803 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), which requires that, before DoD may treat or acquire a major weapon system as a commercial item (1) the Secretary of Defense must determine that the major weapon system meets the definition of commercial item at 41 U.S.C. 403(12) and that such treatment is necessary to meet national security objectives; and (2) the congressional defense committees must be notified at least 30 days in advance. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 212 and 234

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 212 and 234 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 212 and 234 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.270 is added to read as follows:

§ 212.270 Major weapon systems as commercial items.

The DoD policy for acquiring major weapon systems as commercial items is in Subpart 234.70.

PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Subpart 234.70 is added to read as follows:

Subpart 234.70—Acquisition of Major Weapon Systems as Commercial Items

Sec.

Subpart 234.70—Acquisition of Major Weapon Systems as Commercial Items

§ 234.7000 Scope of subpart.

This subpart—

(a) Implements 10 U.S.C. 2379; and

(b) Requires a determination by the Secretary of Defense and a notification to Congress before acquiring a major weapon system as a commercial item.

§ 234.7001 Definition.

Major weapon system, as used in this subpart, means a weapon system acquired pursuant to a major defense acquisition program, as defined in 10 U.S.C. 2430 to be a program that—

(1) Is not a highly sensitive classified program, as determined by the Secretary of Defense; and

(2)(i) Is designated by the Secretary of Defense as a major defense acquisition program; or

(ii) Is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditures for procurement of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

§ 234.7002 Policy.

(a) A DoD major weapon system may be treated as a commercial item, or acquired under procedures established for the acquisition of commercial items, only if—

(1) The Secretary of Defense determines that—

(i) The major weapon system is a commercial item as defined in FAR 2.101; and

(ii) Such treatment is necessary to meet national security objectives; and

(2) The congressional defense committees are notified at least 30 days before such treatment or acquisition occurs. Follow the procedures at PGI 234.7002.

(b) A subsystem or component of a major weapon system that meets the definition of a commercial item—

(1) Shall be acquired under the procedures established for the acquisition of commercial items (see FAR Part 12); and

(2) Is not subject to the requirements of paragraph (a) of this section.

(c) The authority of the Secretary of Defense to make a determination under paragraph (a)(1) of this section may not be delegated below the level of Deputy Secretary of Defense.

[FR Doc. E6–16398 Filed 10–3–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AF23

Defense Federal Acquisition Regulation Supplement; Buy American Act Exemption for Commercial Information Technology (DFARS Case 2005–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement provisions of annual appropriations acts that authorize an exemption from the Buy American Act for the acquisition of commercial information technology.

DATES: *Effective Date:* October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2005–D011.

SUPPLEMENTARY INFORMATION:

A. Background

Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199); Section 517 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447); and Section 717 of the Consolidated Appropriations Act, 2006 (Pub. L. 109–115) provide an exemption from the Buy American Act for the acquisition of information technology that is a commercial item. This final rule amends the acquisition procedures in DFARS Part 225 to reflect the exemption, which previously had been implemented through the issuance of annual DoD-wide class deviations.

DoD published a proposed rule at 71 FR 18694 on April 12, 2006. Five sources submitted comments on the proposed rule. Three of the respondents supported the rule. A discussion of the other comments is provided below.

1. *Comment.* One respondent recommended that application of the Buy American Act restrictions to non-sensitive electrical and electronic products be reevaluated in the context of both the increasingly global economy and potential savings to the Government.

DoD Response. Revision of the application of the Buy American Act to electrical/electronic products would require statutory change and, therefore, is outside the scope of this DFARS case.

2. *Comment.* One respondent requested that the rule clearly apply as an exemption to the Berry Amendment requirements of the clause at DFARS 252.225–7014, Preference for Domestic Specialty Metals, for commercial information technology.

DoD Response. The appropriations act provisions contain authority only for an exemption from the Buy American Act (41 U.S.C. 10a–d). Therefore, DoD is unable to adopt this recommendation for an exemption from the Berry Amendment (10 U.S.C. 2533a).

3. *Comment.* One respondent disagreed with the rule, due to the security risk associated with foreign entities potentially gaining access to DoD information systems.

DoD Response. The policy in the rule is required by statute. The appropriations act provisions state that the restrictions of the Buy American Act "shall not apply" to the acquisition of information technology that is a commercial item. This policy has been in effect since May 2004, through the issuance of annual DoD-wide class deviations. Security of information technology is addressed in DFARS Subpart 239.71, which requires agencies to ensure that information assurance is provided for information technology in accordance with current policies, procedures, and statutes, to include—

(1) The National Security Act;

(2) The Clinger-Cohen Act;

(3) National Security Telecommunications and Information Systems Security Policy No. 11;

(4) Federal Information Processing Standards;

(5) DoD Directive 8500.1, Information Assurance; and

(6) DoD Instruction 8500.2, Information Assurance Implementation.

Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to implement provisions of annual appropriations acts that authorize an exemption from the Buy American Act for the acquisition of information technology that is a commercial item. The objective of the rule is to promote Government access to commercial information technology, by eliminating the application of domestic source requirements to the acquisition of such information technology. The rule applies to (1) All offerors responding to DoD solicitations for commercial information technology where the Buy American Act previously applied (generally, acquisitions between the micropurchase threshold of $2,500 and the World Trade Organization Government Procurement Agreement (WTO GPA) threshold of $193,000); and (2) manufacturers of components of commercial information technology products. Based on DD Form 350, Individual Contracting Action Report, data for Product Service Codes 7010 through 7050, which include ADP Equipment Software, Supplies, and Support Equipment, DoD awarded approximately 8,170 contracts to small business concerns for the acquisition of commercial information technology during fiscal year 2005. Of those contracts, 7,850 were under $175,000, which was the WTO GPA threshold in 2005. The potential negative impact of increased competition from offerors of foreign products is expected to have minimal impact in the range of $2,500 to $100,000, because these awards are generally set aside for small business concerns. Furthermore, there will be a positive impact due to a reduction in administrative burden, since offerors and contractors will no longer need to track the origin of components to determine if an information technology product complies with Buy American Act requirements. The DD Form 350 system does not provide data at the subcontract level. However, manufacturers of domestic components of information technology products may face increased competition from manufacturers of foreign components as a result of this rule. There are no practical alternatives that would accomplish the objectives of the statutory requirements.

C. Paperwork Reduction Act

This rule will reduce the information collection requirements that have been approved by the Office of Management and Budget, under Control Number 0704–0229, for use through May 31, 2007. Under this clearance, 36,175 annual burden hours have been approved for the provision at DFARS 252.225–7000, Buy American Act—Balance of Payments Program Certificate; and 1,000 annual burden

hours have been approved for the provision at DFARS 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate. DoD estimates that the rule will result in a 5 percent reduction in the burden hours for the provision at DFARS 252.225–7000 (1,800 hours) and a 50 percent reduction in the burden hours for the provision at DFARS 252.225–7035 (500 hours).

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 225.1101 is amended by revising paragraph (2)(iii), paragraph (10)(i) introductory text, and paragraph (10)(ii) to read as follows:

§ 225.1101 Acquisition of supplies.

* * * * *

(2) * * *

(iii) An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501); or

* * * * *

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $193,000, and a Free Trade Agreement applies to the acquisition.

* * * * *

(ii) Do not use the clause if—

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction; or

(B) Acquiring information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and the same provision in subsequent appropriations acts).

* * * * *

■ 3. Section 225.7501 is amended by revising paragraphs (a)(2)(iv) and (v) and adding paragraph (a)(2)(vi) to read as follows:

§ 225.7501 Policy.

* * * * *

(a) * * *

(2) * * *

(iv) An industrial gas;

(v) A brand drug specified by the Defense Medical Materiel Board; or

(vi) Information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and the same provision in subsequent appropriations acts);

* * * * *

[FR Doc. E6–16401 Filed 10–3–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 236

RIN 0750–AF41

Defense Federal Acquisition Regulation Supplement; Congressional Notification of Architect-Engineer Services/Military Family Housing Contracts (DFARS Case 2006–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1031(a)(37) of the National Defense Authorization Act for Fiscal Year 2004. Section 1031(a)(37) amended the requirements for submission of a notification to Congress before the award of a contract for architectural and engineering services or construction design in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities.

DATES: *Effective date:* October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D015, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D015 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Debra Overstreet, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Overstreet, (703) 602–0310.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises DFARS 236.601 to implement Section 1031(a)(37) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 1031(a)(37) amended the requirements at 10 U.S.C. 2807, for submission of a notification to Congress before the award of a contract for architectural and engineering services or construction design in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities. The amendments increased the contract dollar threshold for submission from $500,000 to $1,000,000; and reduced the time period for submission, from 21 to 14 days before obligation of funds, when the notification is provided in electronic medium.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to reporting requirements that are internal to the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted

separately and should cite DFARS Case 2006–D015.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1031(a)(37) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 1031(a)(37) amended the statutory requirements for submission of a notification to Congress before the award of a contract for architectural and engineering services or construction design in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 236

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 236 is amended as follows:

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR Part 236 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 236.601 is revised to read as follows:

§ 236.601 Policy

(1) Written notification to the congressional defense committees is required if the total estimated contract price for architect-engineer services or construction design, in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities, exceeds $1,000,000. In accordance with 10 U.S.C. 480, unclassified notifications must be provided by electronic medium.

(i) For military construction or military family housing (10 U.S.C. 2807(b)), the notification—

(A) Must include the scope of the project and the estimated contract price; and

(B)*(1)* If provided by electronic medium, must be provided at least 14 days before the initial obligation of funds; or

(2) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(ii) For restoration or replacement of damaged or destroyed facilities (10 U.S.C. 2854(b)), the notification—

(A) Must include the justification for the project, the estimated contract price, and the source of the funds for the project; and

(B)*(1)* If provided by electronic medium, must be provided at least 7 days before the initial obligation of funds; or

(2) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(2) During the applicable notice period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

[FR Doc. E6–16419 Filed 10–3–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF49

Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Guatemala and Bahrain (DFARS Case 2006–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Bahrain Free Trade Agreement and the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala. The Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials and specify procurement procedures designed to ensure fairness.

DATES: *Effective date:* October 4, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 4, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D028, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D028 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS provisions and clauses to implement the Dominican Republic-Central America-United States Free Trade Agreement, with respect to Guatemala, and the United States-Bahrain Free Trade Agreement. Congress approved these trade agreements in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53) and the United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169).

The rule adds Bahrain and Guatemala to the definition of "Free Trade Agreement country." In addition, the rule removes Guatemala from the definition of "Caribbean Basin country" because, in accordance with Section 201(a)(3) of Public Law 109–53, when the Dominican Republic-Central America-United States Free Trade Agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The dollar thresholds for applicability of the Dominican Republic-Central America-United States Free Trade

Agreement to Guatemala are the same as those for the other countries subject to the agreement. The dollar thresholds for applicability of the Bahrain Free Trade Agreement are $193,000 for supply and service contracts, and $8,422,165 for construction contracts.

Like the Morocco Free Trade Agreement, the Bahrain Free Trade Agreement threshold for supplies and services is higher than the thresholds for the other Free Trade Agreements. Therefore, Bahrainian end products are not covered by the Buy American Act-Free Trade Agreements-Balance of Payments Program provision and clause at DFARS 252.225–7035 and 252.225–7036, respectively.

Like the North American Free Trade Agreement, the Bahrain Free Trade Agreement threshold for construction is higher than the thresholds of the other Free Trade Agreements. Therefore, Bahrainian construction material is excluded from coverage under the Balance of Payments Program—Construction Materials Under Trade Agreements clause at DFARS 252.225–7045 for acquisitions less than $8,422,165.

In addition, this interim rule makes the following editorial changes:

○ Removal of the word "instrumentality" from the definitions of "Caribbean Basin country end product," "Free Trade Agreement country end product," "least developed country end product," "Moroccan end product," and "Canadian end product," for consistency with the FAR definitions of "end product." The term "instrumentality," as used in trade agreements, applies to the European Union. The FAR and DFARS have separately listed each member country of the European Union, so it is unnecessary to continue to refer to instrumentalities in the end product definitions.

○ Amendment of the Trade Agreements clause at DFARS 252.225–7021 to add a definition of "WTO GPA country end product" and to update the Internet address for location of the Harmonized Tariff Schedule of the United States.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up DoD procurement to the products of Guatemala and Bahrain, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and procurements that are set aside for small businesses are exempt from application of the trade agreements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D028.

C. Paperwork Reduction Act

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229 for use through May 31, 2007. The impact, however, is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala, and the United States-Bahrain Free Trade Agreement, as approved by Congress in Public Laws 109–53 and 109–169. The agreement with Guatemala took effect on July 1, 2006, and the agreement with Bahrain took effect on August 1, 2006. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

§ 252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(Oct 2006)";

■ b. In paragraphs (b)(9) and (b)(12)(i) by removing "(Jun 2006)" and adding in its place "(Oct 2006)"; and

■ c. In paragraph (b)(12)(ii) by removing "(Jan 2005)" and adding in its place "(Oct 2006)".

■ 3. Section 252.225–7013 is amended by revising the clause date and paragraph (a)(2)(ii) to read as follows:

§ 252.225–7013 Duty-Free Entry

* * * * *

Duty-Free Entry (Oct 2006)

(a) * * *

(2) * * *

(ii) *Free Trade Agreement country end product*, other than a *Bahrainian end product* or a *Moroccan end product*, as defined in the Buy American Act-Free Trade Agreements-Balance of Payments Program clause of this contract; or

* * * * *

■ 4. Section 252.225–7021 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a)(1)(i)(B), in the first sentence, by removing "or instrumentality";

■ c. By revising paragraph (a)(3)(ii);

■ d. In paragraph (a)(3)(iv) by removing "Guatemala,";

■ e. In paragraph (a)(6)(ii) in the first sentence, and in paragraph (a)(7)(ii) in the first sentence, by removing "or instrumentality";

■ f. By adding paragraph (a)(13); and

■ g. In paragraph (e) introductory text by revising the first sentence. The revised and added text reads as follows:

§ 252.225–7021 Trade Agreements

* * * * *

Trade Agreements (Oct 2006)

(a) * * *

(3) * * *

* * * * *

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

(13) *WTO GPA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different

article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(e) The HTSUS is available on the Internet at *http://www.usitc.gov/tata/hts/bychapter/index.htm.* * * *

* * * * *

■ 5. Section 252.225–7035 is amended by revising the clause date and paragraphs (a), (b)(2), (c)(2)(ii), and Alternate I to read as follows:

§ 252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate (Oct 2006)

(a) *Definitions. Bahrainian end product, domestic end product, Free Trade Agreement country, Free Trade Agreement country end product, foreign end product, Moroccan end product, qualifying country end product,* and *United States* have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) * * *

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) * * *

(2) * * *

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products:

(Line Item Number) (Country of Origin)

* * * * *

Alternate I (Oct 2006)

As prescribed in 225.1101(9), substitute the phrase *Canadian end product* for the phrases *Bahrainian end product, Free Trade Agreement country, Free Trade Agreement country end product, and Moroccan end product* in paragraph (a) of the basic provision; and substitute the phrase *Canadian end products* for the phrase *Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products* in paragraphs (b) and (c)(2)(ii) of the basic provision.

■ 6. Section 252.225–7036 is amended as follows:

■ a. By revising the clause date;

■ b. By redesignating paragraphs (a)(1) through (11) as paragraphs (a)(2) through (12) respectively;

■ c. By adding a new paragraph (a)(1);

■ d. By revising newly designated paragraph (a)(6);

■ e. In newly designated paragraphs (a)(7)(ii) and (a)(8)(ii), in the first sentence of each, by removing "or instrumentality";

■ f. By revising paragraph (c);

■ g. In Alternate I by revising the date to read "(OCT 2006)"; and

■ h. In Alternate I, in paragraph (a)(4)(ii), in the first sentence, by removing "or instrumentality". The revised and added text reads as follows:

§ 252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program (Oct 2006)

(a) * * *

(1) *Bahrainian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(6) *Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore;

* * * * *

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, or, at the Contractor's option, a domestic end product.

* * * * *

■ 7. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a), in the definition of "Designated country", by revising the parenthetical in paragraph (2) to read "(Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore)";

■ c. In paragraph (a), in the definition of "Designated country", by removing "Guatemala," from paragraph (4); and

■ d. By revising Alternate I to read as follows:

§ 252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements

* * * * *

Balance of Payments Program—Construction Material under Trade Agreements (Oct 2006)

* * * * *

Alternate I (Oct 2006)

As prescribed in 225.7503(b), add the following definition of *Bahrainian or Mexican construction material* to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Bahrainian or Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by

providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"].

[FR Doc. E6–16418 Filed 10–3–06; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 71, No. 192
Wednesday, October 4, 2006

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AC62

Annual Guarantee Fee Due Date

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service, an Agency under USDA Rural Development, is proposing to amend its regulations to change the due date of the annual guarantee fee. The annual fee is a non-refundable amount that the lender must pay each year that the loan guarantee remains in effect. Currently, the Finance Office in St. Louis calculates annual fees manually since the borrower submissions of December 31 year-end financial information are not loaded into their automated systems by January 1, when annual fees are due. The Finance Office has requested that the annual fee due date be changed from January 1 to February 28 to allow their automated systems to be uploaded with December 31 year-end information thus enabling them to automate the annual fee calculation process.

DATES: Written or e-mail comments must be received on or before December 4, 2006.

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

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

Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0782.

Hand Delivery/Courier: Submit written comments via mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington, DC 20024.

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

FOR FURTHER INFORMATION CONTACT: C.B. Alonso, Guaranteed Rural Rental Housing Program, Multi Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781; Telephone: 202–720–1624; Fax: 202–205–5066; E-mail: *cb.alonso@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

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

Regulatory Flexibility Act

The Agency Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). New provisions included in this proposed rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Paperwork Reduction Act

There are no new reporting or recordkeeping requirements associated with this proposed rule.

Unfunded Mandates Reform Act

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

Environmental Impact Statement

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

Programs Affected

The program affected is listed in the Catalog of Federal Domestic Assistance under Number 10.438—Rural Rental Housing Guaranteed Loans.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program, 10.438—Rural Rental Housing Guaranteed Loans, is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on State and local Governments. Therefore, consultation with the States is not required.

Discussion

Rural Development administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949. Under the GRRHP, Rural Development guarantees loans for the development of housing and related facilities for low or moderate-income families in rural areas.

Rural Development is amending 7 CFR 3565.53(b) to change the due date of the annual guarantee fee. The annual fee is a non-refundable amount that the lender must pay each year that the loan guarantee remains in effect. Currently, the Finance Office in St. Louis calculates annual fees manually since the borrower submissions of December 31 year-end financial information are not loaded into the Finance Office's automated systems by January 1, when

annual fees are due. The Finance Office has requested that the annual fee due date be changed from January 1 to February 28 to allow their automated systems to be uploaded with December 31 year-end information. The revision of 7 CFR 3565.53(b) will facilitate the automation of the annual fee calculation process.

List of Subjects in 7 CFR Part 3565

Guaranteed loans, Low and moderate income housing, Surety bonds.

For the reasons set forth in the preamble, Title 7, Chapter XXXV of the Code of Federal Regulations is proposed to be amended as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

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

Subpart B—Guarantee Requirements

2. Section 3565.53(b) is revised to read as follows:

§ 3565.53 Guarantee fees.

* * * * *

(b) *Annual guarantee fee.* An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan will be charged each year or portion of a year that the guarantee is in effect. This fee will be collected on February 28, of each calendar year.

* * * * *

Dated: September 15, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–16399 Filed 10–3–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 331

[Docket OST–2006–25906]

RIN 2105–AD61

Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 30, 2005, President Bush signed into law the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006 (Pub.L. 109–115, 119 Stat. 2396, hereafter the Act, or the 2006 Appropriation Act). Section 185 of the Act authorized the Department of Transportation to provide reimbursement to fixed-based general aviation operators and providers of general aviation ground support services at five metropolitan Washington, DC area airports, for the direct and incremental financial losses they incurred while the airports were closed due to Federal Government actions taken after the terrorist attacks on September 11, 2001. The airports are: Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. A total of up to $17,000,000 was appropriated for this purpose. This proposed rule would establish the eligibility requirements and application procedures for those who may qualify for assistance under this statute.

DATES: Comments should be received by November 3, 2006.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST–2006–25906, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. We request that, in order to minimize burdens on the dockets staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following internet address: *http://dms.dot.gov/*. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

FOR FURTHER INFORMATION CONTACT: James R. Dann, U.S. Department of Transportation, Office of General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590. Telephone 202–366–9154. Data sources to assist applicants in preparing portions of their applications are available at the Department of Transportation, Office of the Secretary's Web site at *http://ostpxweb.dot.gov/aviation/index.html,* under "Programs."

SUPPLEMENTARY INFORMATION: Following the terrorist attacks on the United States on September 11, 2001, general aviation activity in the Washington, DC metropolitan area was suspended. Five airports were most affected: Ronald Reagan Washington National Airport (DCA); College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. General aviation operations remain limited at DCA and the three Maryland airports, and the South Capitol Street Heliport is now used exclusively by the Washington DC Metropolitan Police. Because of the reduction in general aviation activity at these locations, the fixed-based operators and service providers that supported general aviation were also affected. In addition, some such entities have had to incur additional costs associated with new security regulations in order to keep their businesses functioning.

Soon after the terrorist attacks, Congress enacted the Air Transportation Safety and System Stabilization Act, Public Law 107–42 (Sept. 22, 2001) (the Stabilization Act). The Stabilization Act directed that compensation be provided to "air carriers" for the direct losses they incurred as a result of the Government's orders halting air traffic, and the incremental losses they incurred between September 11 and December 31, 2001, as a direct result of the terrorist attacks. Under this authority, approximately $4.6 billion has been distributed to qualifying carriers, providing them assistance as they sought to avoid bankruptcy and recover financially in the aftermath of September 11. Such carriers were also made eligible for loan guarantees under a different title of the Act. However, as noted, relief was limited in the statute to "air carriers," a term defined at 49 U.S.C. 40102. Because the fixed-based operators and service providers at issue here did not fall within that definition, they were not eligible for either compensation or loan guarantees under the Stabilization Act.

In 2003, the United States House of Representatives Committee on Appropriations requested that the Department of Transportation prepare a report detailing the documented financial losses by holders of real property leases at the five affected

airports that were attributable to the Federal actions since September 11, 2001. (House Report 108–243, July 30, 2003, p. 8.) The Committee stated that such a report would assist the Congress in considering "potential federal reimbursement for a portion of these unusual financial losses." In October, 2005, the Secretary of Transportation submitted to the Committee the requested report, which was entitled: *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report* (October 2005 DOT study). A copy of this Report has been placed into Docket 2006–25906.

The October 2005 DOT study identified sixteen general aviation leaseholders at the five airports, and estimated the financial losses that each incurred during its study period (which ran from September 11, 2001 to January 23, 2004) due to the Federal actions taken after the terrorist attacks. The estimates reflected the difference in net income between what the companies projected for the study period and the actual net income for that period, and included both losses in net income and one-time costs attributable directly to compliance with new restrictions or regulations resulting from the terrorist attacks. In formulating its estimates, the Department's consultant relied primarily on voluntary information provided by each entity, and while interviews were conducted to confirm the general reasonableness and consistency of the numbers provided, no independent analysis, audit or certification was conducted. Therefore, the October 2005 DOT study advised that these estimates were merely preliminary and meant solely to inform Congress in determining whether and in what amount to appropriate funds to reimburse these general aviation entities. The October 2005 DOT study also indicated that, if compensation were to be made available, "the financial data establishing the basis for any payment, especially forecast revenue, cost and net income, should * * * be subject to a more rigorous verification regime." (*Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report, at fn. 3.*)

The total estimated financial losses for the period reviewed were $10,443,936, with more than half of that amount being reported for one firm, Signature Flight Support. The estimates were in current dollars and reflected no consideration for the time value of money.

On November 30, 2005, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006, became law. Section 185 of the Act provides for the reimbursement of "fixed-based general aviation operators and the providers of general aviation ground support services" at the five cited airports for the "direct and incremental financial losses incurred while such airports were closed to general aviation operations, or as of the date of enactment of this provision in the case of airports that have not reopened to such operations, by these operators and service providers solely due to actions of the Federal Government following the terrorist attacks on the United States that occurred on September 11, 2001." The Act provides up to $17 million to reimburse these general aviation entities; however, it states that, of the $17 million provided, an amount not to exceed $5 million, if necessary, is to be available on a pro rata basis to fixed-based general aviation operators and the providers of general aviation ground support services located at the three Maryland airports: College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland.

Section 185 further states that the appropriated funds included the cost of "an independent verification regime;" that no funds shall be obligated or distributed to such general aviation entities until an independent audit is completed; that losses incurred as the result of violations of law, or through fault or negligence of such entities or of third parties (including airports) are not eligible for reimbursement; and that the obligation and expenditure of funds are conditional upon full release of the United States Government for all claims for financial losses resulting from such actions.

Section-by-Section Analysis

Section 331.1 What is the purpose of this Part?

This section states the proposed purpose of part 331, which is to carry out the statutory provisions of the Act with respect to compensating fixed-based general aviation operators and providers of general aviation ground support services at five metropolitan Washington, DC area airports.

Section 331.3 What do the terms used in this part mean?

This definitions section proposes to incorporate terms from the Act or other existing sources. This section also proposes to define additional terms necessary to implement the procedures to provide reimbursement under the Act.

Entities that meet the definition of a "fixed-based general aviation operator" or a "provider of general aviation ground support services" with operations at one or more of the five named airports on September 11, 2001 would be eligible under the plain statutory language to apply for reimbursement of eligible losses under the 2006 Appropriation Act.

The Department understands that a "fixed based general aviation operator," (FBO), customarily refers to an entity based at a particular airport that provides services and support to general aviation, which may include fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing; and the provision of air charter services. We expect that most, if not all, eligible FBOs will have been leaseholders identified in the October 2005 DOT study. The Department would tentatively further define a "provider of general aviation ground support services" as a non-FBO operating at an airport that supplies such or similar services exclusively or predominantly to support general aviation activities, extending as well to flight schools, security services, aircraft and avionics maintenance, etc. The reference to "services" in the statute would seem to preclude non-FBO entities from qualifying that provided only products to general aviation, *e.g.*, a parts supplier.

The Department notes that the October 2005 DOT study performed under House Report 108–243 was limited to "holders of real property leases" at the airports. Because the 2006 Appropriation Act used different language to describe the entities that were to be eligible for reimbursement, the Department believes that reimbursement for losses is not necessarily limited to only those sixteen entities that were identified in the October 2005 DOT study. As the Department expects that case-by-case determinations may be necessary, we propose that any entity that applies for reimbursement under the Program describe itself, the services it provides or provided, the airport or airports at which it provided those services, and certify that it meets the regulatory definitions, in order to facilitate an eligibility determination by the Department.

We also propose common usage definitions for "losses" and "incurred," as we did in the regulations

implementing the Stabilization Act. *See* 67 FR 54062 (August 20, 2002). Thus, "losses" refer to something that is gone and cannot be recovered, and "incurred" means to become liable or subject to (as to incur debt). Applying these definitions, for example, a temporary loss that is recovered later, or is expected to be recovered later, would not be eligible for reimbursement.

The Department proposes to define the statutory phrase "direct and incremental losses" to mean those losses that resulted from the Federal Government's closure of the five Washington area airports to general aviation operations. "Direct and incremental losses" would include losses incurred on September 11, 2001 through the end of the eligibility reimbursement period for each airport. The Department proposes to read "direct and incremental losses" as a single category because of the difficulty in apportioning losses between direct losses and incremental losses while an airport was closed.

As discussed in more detail in Section 331.13, the eligibility period is different for each of the five Washington area airports. For the reasons set forth in Section 331.13, the Department is proposing that the term "closed" or "closure" be defined so as to carry out the intent of Congress in establishing the eligible period for reimbursement for each airport. For Washington National Airport, "closed" or "closure" would mean the time between September 11, 2001 and the date that general aviation operations were generally permitted to resume. For the Washington South Capitol Street Heliport, which was closed at the date that Section 185 of the Act was enacted, "closed" or "closure" would mean the time between September 11, 2001 and November 30, 2005. For the three Maryland airports, because general aviation operations resumed more gradually, "closed" or "closure" would mean the time between September 11, 2001 and the date that transient traffic was generally permitted to return.

Finally, the Department proposes that, for purposes of determining eligibility under the Act, "forecast" should be defined as an objective and reliable projection of the revenue that would have been earned and the expenses that would have been incurred during the eligible reimbursement period had the attacks of September 11, 2001 not occurred. The Department believes that applicants either prepared such forecasts before September 11, 2001, or have the ability to prepare or reconstruct such reasonable forecasts based on financial records generated and maintained in the ordinary course of business.

Section 331.5 Who may apply for reimbursement under this part?

This part specifies the applicants eligible for reimbursement under the Act. The Department proposes that applicants submitting claims under the Act for losses incurred at two or more airports complete separate applications. For example, if an applicant provided fixed-based general aviation or general aviation ground support at Ronald Reagan Washington National Airport and College Park Airport in College Park, Maryland, then the applicant would complete two applications.

Section 331.7 What losses will be reimbursed?

Under subsection (a) the Department proposes the method that would be applied to determine reimbursement. The Department proposes that losses should be measured under the same general approach utilized in the October 2005 DOT study, *i.e.*, the difference in net income between what an eligible applicant forecast (or would have reasonably expected) for the applicable reimbursement period, and the actual net income it earned for that period. The Department deemed this "lost profits" approach to be the most reasonable one for purposes of its October 2005 study, and it was the same approach that was utilized in providing compensation to air carriers under the Air Transportation Safety and System Stabilization Act. Thus, the Department has had considerable experience in analyzing and approving compensation claims under such a regime. Moreover, since Congress likely relied on the analysis and estimates made by the Department and the Department's consultant in the October 2005 DOT study when it enacted the 2006 Appropriation Act, this approach would seem most consistent with Congress' expectations regarding the cost to be incurred for the program.

Under subsection (b) the Department proposes that if applicants make a claim for extraordinary, non-recurring, or unusual adjustments, they would also be requested to demonstrate that such losses were fully attributable to the Federal Government's actions, that the claim be made in conformity with Generally Accepted Accounting Principles (GAAP), that the expenses of the loss were fully borne within the applicable statutory reimbursement period, that the charge was not discretionary in nature, and that reimbursement would not be duplicative of other relief. The Department notes that it appears that Congress intended one-time costs that were necessarily incurred in order to comply with Federal Government security requirements to be reimbursable, and we propose that they be. However, under the Air Transportation Safety and System Stabilization Act compensation program, a number of applicants sought reimbursement for various types of extraordinary, non-recurring, or unusual charges, which DOT generally found not to be eligible. For example, the Department typically rejected claims for impairment of long-lived assets, relying in part on guidelines published by the Financial Accounting Standards Board (FASB) recognizing that "impairment of long-lived assets as a result of the September 11 events would in many cases be impossible to measure separately from impairment due to the general economic slowdown that was generally acknowledged to be under way." (Emerging Issues Task Force Meeting Minutes, at 4.) Therefore the Department is proposing that extraordinary, non-recurring, or unusual adjustments be separately explained by each applicant in order to determine eligibility. Each such claim would prompt a case-by-case review to determine whether it should be reimbursed under the Act, using the same type of analysis that was employed in the Air Transportation Safety and System Stabilization Act cases.

Subsection (c) proposes that temporary losses recovered after the terrorist attacks of September 11, 2001, or that applicants expect to recover, should not be eligible for reimbursement.

The Department proposes in subsection (d) that if an applicant engaged in any aviation or non-aviation income-producing activities after September 11, 2001, such income should mitigate its losses and so reduce reimbursement. If, for example, an applicant after September 11, 2001 contracted out its services for some of its maintenance and avionics repair work to other carriers or at other airports, that income would serve to reduce its reimbursement under this Act.

Similarly, the Department proposes in subsection (e) that so-called "cost savings" cannot be claimed and manipulated into a basis for additional reimbursement. Such "cost savings" arise from instances in which an applicant achieves after September 11 a reduction in actual expenses as compared to its forecast expenses in expense categories it claims were not

affected by the Federal Government's closure of airports. We assume that potentially eligible general aviation entities would, like most businesses, try to maintain strict controls on expenditures, especially in cases in which revenue shortfalls are being anticipated (such as after the terrorist attacks). We perceive this as simply good business practice, so that these savings should reduce reimbursement needs. *See* 67 FR 18473 (Apr. 16, 2002); *Federal Express Corp.* v. *Mineta*, 434 F.3d 597 (DC Cir., 2006).

The Department proposes in subsection (f) that applicants not be reimbursed for the lost time value of money. As noted above, the October 2005 DOT study questioned whether reimbursement pursuant to Section 185 should account for the time value of money, through payment of interest on lost profits for the period of time the funds were not available for use. The Department has tentatively determined that, as a legal matter, it is precluded from payment of interest under the circumstances present here. *See, e.g., United States* v. *Alcea Bank of Tillamooks,* 341 U.S. 48, 49 (1951) (noting that, "[i]t is the 'traditional rule' that interest on claims against the United States cannot be recovered in the absence of an express provision to the contrary in the relevant statute or contract"). We are aware of no exceptions that would apply here so as to make such payment here allowable.

The Department also proposes to exclude lobbying fees and attorneys' fees in subsection (g). The October 2005 DOT study did not address the compensability of reasonable lobbying and attorney's fees. However, a question has arisen as to whether the program should provide reimbursement for those professional service fees, such as those incurred in seeking and obtaining the legislative relief ultimately embodied in Section 185. The Department proposes that such fees not be eligible for reimbursement. We note initially that a Federal statute (31 U.S.C 1352) prohibits using appropriated funds to compensate lobbying costs for specific activities. To implement this provision, the Department adopted regulations as generally prescribed by the Office of Management and Budget (OMB), that broadly limit the expenditure of appropriated funds by recipients of "a Federal contract, grant, loan, or cooperative agreement" for lobbying costs. *See* 49 CFR 20.100. While "reimbursement" is not included among the covered Federal actions, the Department believes that it should be here, in order to achieve consistency with the spirit and intent of these provisions, and therefore would not reimburse with appropriated funds expenditures for such specified activities. Accordingly, such costs would need to be broken out and excluded from an applicant's claim.

In order to assist the Department evaluate the reasonableness of claims it receives from applicants, it proposes in subsection (h) that the applicants' calculations of revenues, expenses and income be based on financial documents customarily maintained by the applicants in the course of conducting business.

Section 331.9 What funds will the Department distribute under this part?

The Department proposes to disburse up to the full amount of reimbursement it determines is payable to applicants under section 185 of the Act.

Section 335.11 What are the limits on reimbursement to operators or providers?

Congress has limited reimbursements to losses incurred as a direct result of actions by the Federal Government and to losses incurred within a finite period of time. As discussed above, even if losses may be properly reported under generally accepted accounting principles (GAAP) within that period, if they are actually experienced over a longer or different period of time, and/or if they are not fully attributable to the Federal Government's actions to close airports, they may not be properly reimbursable under the Act.

The Department proposes in subsection (a) to reimburse applicants subject to the subpart C set-aside for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The Department further proposes that the amount available to each applicant be subject to the Department's cost of independently verifying claims for reimbursement, as explained in Section 331.17.

In subsection (b), the Department proposes that, if an overpayment is made to an applicant for any reason, the Federal Government would collect the overpayment amount in accordance with the Federal Claims Collection Act of 1996 (31 U.S.C. 3701 *et seq.*).

Section 185 requires that, as a condition for payment, parties provide a full release to the United States from all claims for financial losses resulting from actions of the Federal Government following the terrorist attacks of September 11, 2001. The Department proposes in subsection (c) to utilize a standard release form.

Section 331.13 What is the eligible reimbursement period under this part?

Section 185 provides funds to reimburse GA entities for eligible losses "incurred while such airports were closed to general aviation operations, or, if an airport has not reopened to such operations, as of the date of enactment of Public Law 109–115" (*i.e.*, November 30, 2005). Because four of the five the airports in question were subject to differing levels of restriction in general aviation activity over time, the language "while such airports were closed to general aviation operations" requires the Department to interpret whether the eligible period is that during which the airports were closed to *all* general aviation operations, or to *some* or *any* general aviation operations.[1]

As background, the period of closure for all five airports began on September 11, 2001, when immediately after the terrorist attacks, the Federal Aviation Administration (FAA) prohibited all aircraft operations within the territorial airspace of the U.S. Exceptions were made only for certain military, law enforcement, and emergency-related aircraft operations. This general prohibition was lifted in part on September 13, 2001.

Due to continuing security concerns in Washington, DC airspace, restrictions remained in place on aircraft operations in the DC metropolitan area. On October 4, 2001, limited air carrier operations were permitted to resume at Ronald Reagan Washington National Airport ("DCA"), but general aviation activity there and elsewhere in the metropolitan area was limited to repositioning of aircraft and operations under limited waivers. Under Notice to Airmen (NOTAM) 1/3354 of December 19, 2001, the FAA continued with minor exceptions the total prohibition on all Part 91 flight operations within 15-miles of the Washington Monument.

At DCA, official State and Federal government operations, and other flights operating under limited waivers, generated about 20 general aviation flights per month through 2004. These

[1]The Department's GRA Study considered as "direct losses" those losses incurred during the period of "full" closure—through March, 2002—and as "incremental losses" those losses incurred after the reopening of the airports that were nonetheless attributable to the Federal actions taken as a result of the September 11 terrorist attacks. The language of section 185 limits reimbursement to the direct and incremental losses incurred while the airports were "closed" to GA operations, leaving unsettled whether Congress was altering the time periods for which calculations of loss would be made from the approach taken in the Study.

flights required special security arrangements, including pilot and passenger background checks and the presence of law enforcement personnel on board. Because of these restrictions, much DCA general aviation activity migrated to Washington Dulles Airport, Baltimore—Washington International Airport, or other facilities. On May 25, 2005, the Department of Homeland Security proposed a broader reopening of DCA to various GA operations, including corporate aircraft and charter flights. Up to 48 GA flights per day would be allowed, although only for operations from authorized originating "gateway" airports. Operations were subject to stringent security measures, including: Advanced registration and qualification of operators and crews; Transportation Security Administration ("TSA") inspection of crews and, passengers; submission of manifests 24 hours in advance of the flight; enhanced background checks; and the presence of a law enforcement officer on board each flight. On October 18, 2005, flights under the new rules resumed at DCA.

The FAA's Special Federal Aviation Regulation (SFAR) 94, issued as a Final Rule on February 19, 2002 (67 FR 7537), set out procedures under which College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field (the "three Maryland airports") could be partially reopened to general aviation traffic. SFAR 94 permitted the three Maryland airports to develop security procedures that, if approved by the FAA Administrator, would allow pilots that had been based there to resume some operations. These procedures encompassed such matters as identification of an airport security coordinator, maintenance of a record of all individuals and aircrafts authorized to operate from the airport, implementation of robust security monitoring and security awareness procedures, etc. Although SFAR 94 allowed the resumption of some operations under tightly controlled security requirements, based pilots were still unable to conduct pattern operations or flights to another affected airport. In addition, transient aircraft operations continued to be prohibited. Based on SFAR 94, and the FAA's NOTAM 2/1257 that was published on February 14, 2002, College Park and Potomac airports were able to reopen to limited resident GA operations on February 23, 2002. Washington Executive/Hyde Field followed on March 2, 2002.

SFAR 94 was reissued on February 14, 2003 for an additional two years, and, on February 10, 2005, new rules were issued that authorized the resumption of transient operations on a restricted basis. 70 FR 7150. Under these restrictions, pilots were required to: Submit background information on themselves, including fingerprints; to undergo a terrorist threat assessment, criminal records check, and check of his or her FAA record for certain violations; and be briefed on procedures for operating at the airport. Further, pilots who wished to operate aircraft from or to any of the three Maryland airports were required to file a flight plan in advance, obtain air traffic control clearances and a discrete transponder code, and follow the arrival and departure procedures that were required by the FAA. See 49 CFR Part 1562. The flights into the three Maryland airports under these restricted procedures began after these rules became effective on February 13, 2005.

The restrictions on general aviation operations in Washington airspace have obviously translated into a significantly lower volume of operations than had been in place prior to the terrorist attacks. At DCA, in the year 2000, there had been 60,225 GA operations. In contrast, the Department of Homeland Security stated that, between January of 2003 and March of 2004, there had been a total of 146.

The October 2005 DOT study found that local operations at College Park Airport fell from 19,657 in 2001 to 2,500 in 2002 and 2,000 in 2003. Itinerant operations were reported as dropping from 4,800 in 2001 to zero in both 2002 and 2003.

At Potomac Airfield, the October 2005 DOT study reported local and itinerant operations as staying constant for the three years, but considered that such data "may not be totally accurate because they show exactly the same number of operations each year."

Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report, at fn. 11.

At Washington Executive/Hyde Field, the October 2005 DOT study found that local operations were constant at 34,580 in 2001 and 2002 (which conclusion may suffer from the same inaccuracy in reporting as affected Potomac Airfield) but fell to 6,970 in 2003. As to itinerant operations, the October 2005 DOT study reported a fall from 1,900 in 2001 to 30 in 2002 and 10 in 2003.

The Washington South Capitol Street Heliport is now closed to GA operations. According to the Department's consultant, the Washington Metropolitan Police Department helicopter operation unit is now the exclusive user of the heliport.

The reduction in traffic volumes has translated into financial losses for the fixed-based general aviation operators and providers of general aviation ground support services at the airports. The October 2005 DOT study reported financial losses for the general aviation leaseholders at the airports as being most severe in 2002, cumulating at almost $5.3 million. However, the losses extended as well into 2003, cumulating at over $3.4 million and into the early part of 2004.

In construing the language of section 185 as to the period each of the five airports was "closed to general aviation operations," one approach would be for the Department to consider the period of closure to run until the first general aviation operations were permitted (on other than the special waiver, highly restricted basis in effect immediately after September 11, 2001). For DCA, that would be until October 18, 2005; for College Park and Potomac airports it would be until February 23, 2002; and for Washington Executive/Hyde Field, it would be until March 2, 2002. (For Washington South Capitol Street Heliport, it seems clear that the period of reimbursement eligibility would run for the full period from September 11, 2001 to November 30, 2005.) Another option would be to consider the three Maryland airports "closed" until the airports were more broadly reopened to include transient traffic, if even on a restricted basis, *i.e.* February 13, 2005. A final alternative would be to interpret the language to extend the time to the full September 11, 2001 to November 30, 2005 period, on the basis that some of the pre-September 11 general aviation traffic had not returned due to the restrictions, and so the airports might be thought of as not being "fully open" even to the present day.

The Department has tentatively determined that the respective periods of eligibility should be from September 11, 2001 until October 18, 2005 for DCA; until February 13, 2005 for the three Maryland airports, although limited for Washington Executive/Hyde Field as discussed below; and until November 30, 2005 for the Washington South Capitol Street Heliport. Comments on these proposed timeframes are welcomed. The following chart sets forth the proposed periods of eligibility for reimbursement:

Airport	Period of eligibility for reimbursement	
	Begin date	End date
Ronald Reagan Washington National Airport	September 11, 2001 ..	October 18, 2005.
College Park Airport in College Park, Maryland	September 11, 2001 ..	February 13, 2005.
Potomac Airfield in Fort Washington, Maryland	September 11, 2001 ..	February 13, 2005.
Washington Executive/Hyde Field in Clinton, Maryland	September 11, 2001	May 16, 2002.
	September 29, 2002 ..	February 13, 2005.
Washington South Capitol St. Heliport in Washington, D.C.	September 11, 2001 ..	November 30, 2005.

In so proposing, we considered that Congress must not, at the time it enacted section 185, considered all five of the airports to still be "closed." If it did, it would simply have provided that the period for reimbursement would extend through the date the statute was enacted. To give meaning to the phrase "while closed to general aviation operations" in the Act, at least one of the airports must have been thought of as having reopened prior to the date of enactment. Of the remaining two approaches, we have tentatively decided to use the February 13, 2005 date for the three Maryland airports, rather than the alternative dates in 2002. The GA entities potentially eligible for reimbursement at the three Maryland airports continued to sustain serious financial losses well past the dates that the airports were reopened for some resident based operations, and it seems inconsistent with the clear remedial purpose of section 185 to restrict reimbursement only for losses incurred by these entities through February or March of 2002. Moreover, given these continuing financial impacts, it seemed inequitable to permit reimbursements at DCA over a four year period, but restrict such reimbursements at the three Maryland airports for less than six months. And, although restrictions continue at the three Maryland airports, they do as well at DCA, and similar treatment among them would seem to be best achieved by using the February 13, 2005 and October 18, 2005 dates.

The Department notes that section 185 also provides that losses incurred as a result of violations of law, or through fault or negligence, of such operators and service providers or of third parties (including airports) are not eligible for reimbursement. In this connection, the Department understands that Washington Executive Airport/Hyde Field was reclosed on May 17, 2002, because of a security violation, and not reopened again until September 28, 2002. *See* 70 FR 45256 (Aug. 4, 2005). The Department therefore tentatively believes that that period must be excluded from the reimbursement calculus, only for Washington Executive Airport/Hyde Field. The Department also believes that Potomac Airfield was closed from November 1 to December 16, 2005 for a violation of its security program. However, because that period would be outside the tentative reimbursement period of September 11, 2001 to February 13, 2005, reimbursements under this program would not be affected. The Department would welcome comments on this issue, particularly as to whether these exclusions should extend to other periods or situations.

Section 331.15 How will other grants, subsidies, or incentives be treated by the Department?

The Department understands that Potomac Airfield, College Park Airport, and Washington Executive Airport/Hyde Field, at least, received Federal grants under the Airport Improvement Program to reimburse them for the cost of operations and capital improvements associated with implementing security programs. State and local authorities may have provided grants as well. The Department is proposing that any applicants who received, directly or indirectly, post-September 11 grants report them as revenues, because such grants should have the effect of reducing reimbursable losses. The Department is also proposing to add a question on receipt of any such grants in the Background and Eligibility Form to ensure proper focus on this issue.

Section 331.17 How will the Department verify and audit claims under this part?

This part proposes the method by which the Department would handle verification and auditing of claims. It is clear that Congress intended that these appropriated funds be used carefully and responsibly to reimburse only eligible entities for their eligible losses. To that end, section 185 would provide funds for an "independent verification regime," and would require that an independent audit be completed before funds were distributed to eligible general aviation entities. Accordingly, the Department's Office of the Inspector General (OIG) was consulted as to how to most efficiently and effectively implement this mandate. In part because there may be a wide range in the dollar amount of claims, we are proposing, with OIG concurrence, a flexible approach to achieve Congress's objectives. First, all applicants would be required to certify the accuracy and completeness of their claims, under penalty of law. The Department has considerable experience with such certification requirements, can refer suspected violations to the Department of Justice, and itself has an enforcement program under authority of the Program Fraud and Civil Penalties Act (31 U.S.C. 3801 note, Pub. L. 99–509; 49 CFR Part 31). For verification purposes, applicants would also be required to retain all financial records for the period covered by their claim, as well as all data used in support of their claim (including actual monthly result data from 1999 forward).

Department staff including attorneys, accountants, and analysts, who have extensive experience in reviewing the financial data of aviation firms, would initially review each claim in detail, contacting the individual applicants and consulting with OIG as questions arise in order to verify the accuracy of the information provided. Larger claims, and any questioned claims, would be subject to individual audits. The Department proposes that this auditing process should be flexible. Where an audit is warranted, the Department would forward the claim to either the OIG or an independent auditor. Claims believed to be fraudulent would be referred to the Department of Justice for possible criminal or civil enforcement actions The Department believes that this process, relying on the audit capabilities of the OIG and/or independent auditors, and the enforcement capabilities of both DOT and the Department of Justice, would meet Congress' intent that only meritorious claims be reimbursed.

Under section 185, expenses necessitated by independent verification and auditing activities may be paid with funds appropriated in the Act. While the Department does not anticipate that the verification activities performed by its analysts would necessitate payment

from the appropriated funds, the Department recognizes that the costs of an audit, particularly for larger claims, could be considerable. Therefore, the Department is proposing to retain the flexibility to recover the costs of audits from the amount of reimbursement that eligible applicants would have received if their claims did not necessitate audits in the first place. For example, if the cost to audit a questioned claim of $100,000 is $5,000, then the applicant would receive $95,000 in reimbursement once the Department determined that the payment was appropriate.

Section 331.19 Who will approve reimbursement once an application has been received and a claim has been verified and/or audited?

This part proposes to give the Assistant Secretary for Aviation and International Affairs authority to determine eligibility and authorize reimbursement under the Act. Expertise on aviation policy resides with the Assistant Secretary for Aviation and International Affairs. This official has administered similar programs and is supported by a professional staff of aviation analysts and economists who are knowledgeable on such matters.

Subpart B—Application Procedures

Section 331.21 What information must operators or providers submit in their applications for reimbursement?

In order to calculate and support a reimbursement claim, the Department proposes that an applicant complete the form which is found in Appendix A and submit the information it requires, including eligibility information and a summary calculation of the financial data supporting an applicant's claim for reimbursement, as shown in the following table (which is incorporated into Appendix A):

FINANCIAL DATA

	Column A	Column B	Column C
	Pre 9–11–01 Forecast or after-the-fact estimate for the eligible period*	Actual results for the eligible period*	Column A minus Column B
Line 1—Total Operating Revenues.			
Line 2—Total Operating Expenses.			
Line 3—Total Operating Income or (Loss).			
Line 4—Non-operating Revenue.			
Line 5—Non-operating Expenses.			
Line 6—Non-operating income(loss).			
Total—Line 3 plus line 6.			

The Department proposes in the Background and Eligibility Form to require the submission of an applicant's profit and loss statements, or such financial records generated as a routine matter for the use of management, for the years 1999 through 2005. Similarly, the Department proposes to require the submission of actual forecasts that applicants prepared for both these baseline periods and for any part of the reimbursement periods. The Department further proposes that, where appropriate, after-the-fact forecasts should be allowed. After-the-fact forecasts are discussed in more detail under subsection (f) of this section.

All financial records submitted in support on an application would be subject to the same certification requirement as the other information that is submitted through the Background and Eligibility Form. These data would enable the Department to establish baseline business trends and forecast experience for applicants prior to the September 11, 2001 terrorist attacks, which would be used as benchmarks to test the reasonableness of the applicants' reimbursement claims.

The Department would use the applicant's actual and forecast results for the appropriate reimbursement period, together with such sources as macroeconomic data, individualized applicant business trend information, and the applicant's explanations, to make its determinations on the payment of claims.

In calculating their revenues and expenses, the Department proposes that applicants utilize already existing financial data, supplemented as necessary by footnotes or explanations pertinent to the reimbursement application. Financial schedules, such as income statements, statements of operations, forecasts of operating results, budget documents or other similar information, may be used as the reference sources for completing the table in Appendix A. The Department suggests that these documents be a starting point under the assumption that most businesses maintain financial statements as a routine part of doing business, or for other reasons such as income tax preparation, loan applications, or contract negotiations. The Department believes that use of these documents, rather than requiring the completion of that detailed new forms, would facilitate the reimbursement process, especially for the smaller companies typically engaged in fewer activities.

As the eligibility periods, for the most part, begin and end on days other than the first or last days of the month, quarter or year, the Department proposes in subsection (b) that data from already existing financial statements would be adjusted, on a pro-rata basis, to comply with the eligibility periods.

The Department anticipates that some applicants may have prepared multiple forecasts for the same time period of time. Therefore, the Department proposes in subsection (c) that, if multiple forecasts were prepared, applicants utilize the one most recently approved, prior to September 11, 2001, so long as it was otherwise objective and reliable.

In subsection (d), the Department proposes that information provided by applicants for use in the October 2005 DOT study should not be merely recited for purposes of the application. While

the October 2005 DOT study noted that the losses it reported were likely to "reasonably approximate" the general aviation leaseholder's total losses (at least through January 23, 2004), it also advised that the financial data establishing the basis for a payment should "be subject to a more rigorous verification regime." The Department proposes that applicants not simply rely on the estimates as then reported; if they do, the Department would have the right to reject their claim or forward it for full verification follow-up, including audit. Applicants who reiterate the losses reported in the October 2005 DOT study should make fully transparent the bases for those estimates, and provide a basis for testing the reasonableness of the estimates by supplying supporting data.

In subsection (e) the Department proposes that failure to complete the required information constitutes grounds for a rejection. This subsection would adhere to Congress's desire that the appropriated funds be expended prudently. The proposed language in subsection (e) leaves the Department discretion in determining whether or not the missing information warrants a rejection. Subsection (e) also seeks to clarify that the burden to substantiate claims should rest with applicants and not the Department.

Subsection (f) proposes to allow the use of "after-the-fact" forecasts. If pre-September 11, 2001 forecasts were not prepared at all, or prepared for less than the full reimbursement period, the rule would require applicants to make a good faith effort to quantify their expected operating results for the part of the reimbursement period not covered by its actual forecasts. The Department expects that not all of the fixed-based general aviation operators and providers of general aviation ground support services routinely forecasted projected revenues and expenses, (and, for those that did, they may have done so only in a rough or summary "year-end" fashion that would not permit ready calculations of losses due to September 11-related events). Further, the losses eligible for reimbursement here can extend over several years, for which reliable forecasts may not be available, and even when firms utilize advanced forecasting methods, there is necessarily a range of reasonableness in any such exercise that makes precise determinations of loss impossible. However, the Department believes that Congress readily understood that precise calculations of losses cannot be practically obtained, and that good-faith, carefully considered estimates would need to be used in determining losses, with those estimates subject to independent verification and audit to prevent overreaching and fraud.

In subsection (g), the Department proposes that the Background and Eligibility Form, along with supporting financial documents, be certified as having been prepared under the supervision of the applicant's President, Chief Executive Officer, or Chief Operating Officer, and as being true and accurate to the best of his or her knowledge. Subsection (g) further proposes that applicants acknowledge in their certifications that the submission of false or deceptive data is punishable under law by fine and/or imprisonment.

To assist the Department with verification of claims, and to facilitate any necessary audits, the Department proposes in subsection (h) that applicants retain all materials that they relied upon to establish their claim for reimbursable losses.

The Department proposes under subsection (i) to seek information on other specific types of expenses, including mitigating expenses, lobbying expenses, and special expenses.

In subsection (j), the Department proposes that if an applicant believes the release by the Department to the public of information provided by the applicant would cause substantial harm to the applicant's competitive position, the applicant may request that the Department hold such submissions confidential. In preference to "blanket" requests, confidentiality requests should be specific to particular data submitted, as it is very unlikely that all submitted data could cause competitive harm if released to the public.

Section 331.23 In what format must applications be submitted?

The Department proposes in subsection (a) that the Background and Eligibility Form found at Appendix A be submitted in hardcopy format and, if possible, electronic format. The Department also proposes to make the Background and Eligibility Form available in electronic format.

In order to facilitate the review and manipulation of financial data for verification purposes within the Department, subsection (b) proposes that supporting financial records be submitted in electronic format.

Under subsection (c), the Department proposes that faxes and e-mails not be accepted because of the difficulties they create in handling large volumes of documents.

Section 331.25 To what address must operators or providers send their applications?

In order to expedite the timely receipt and review of applications, the Department is proposing in subsection (b) that applications be submitted via an express package service (*e.g.*, Federal Express, DHL, UPS). Alternatively, applicants may wish to hand deliver applications to the Department. The Department would make arrangements to receive such packages in a method that would be consistent with current Departmental office security procedures.

The Department proposes that the address stated in the rule be mandatory. Accordingly, the Department proposes in subsection (c) to not accept applications sent elsewhere.

Section 331.27 When are applications due under this part?

Reimbursement is expected to provide potential applicants, particularly small entities, with significant relief. The Department expects that most, if not all, potential applicants are aware of the reimbursement available under this rule, and that they are in a position to quickly comply with its requirements in order to expedite their reimbursement payments. The Department would take steps to post all relevant information on its Web site and coordinate with the management at the five airports to ensure that all potential applicants are promptly advised of the issuance of the final rule. For the foregoing reasons, the Department proposes to expedite the time requirement for submitting applications. We believe that a period of 30 calendar days from the date of publication of the final rule provides sufficient time to complete and submit an application. The Department welcomes comment from potential applicants on the sufficiency of this proposed period.

Subpart C—Set-Aside for Operators or Providers at Certain Airports

Section 331.31 What funds are available to applicants under this subpart?

The 2006 Appropriation Act provides that, from the full $17 million appropriated, an amount not to exceed $5 million shall be available on a pro-rata basis, if necessary, to fixed-based general aviation operators and providers of general aviation ground support services at the three Maryland airports—College Park, Potomac Airfield, and Washington Executive/Hyde Field. The Department tentatively construes this language as necessitating a separate

totaling of the eligible losses incurred at these three airports.

Section 331.33 Which operators and providers are eligible for the set-aside under this subpart?

The Department reads the plain language of the Act to restrict eligibility under this subpart to fixed-based general aviation operators and providers of general aviation ground support services at the three Maryland airports—College Park, Potomac Airfield, and Washington Executive/Hyde Field.

Section 331.35 What is the basis upon which operators and providers will be reimbursed through the set-aside under this subpart?

For the $5 million set-aside for the three Maryland airports, the Department proposes to apply the same procedures set forth in subpart B of this part. The Department reads section 185 of the Act to require an additional procedure if total eligible losses at the three Maryland airports exceed $5 million. In the event that eligible losses at the three Maryland airports total more than $5 million, the Department proposes that a proportionate amount should be paid to each eligible entity. For the reasons set forth in Section 331.17, the Department proposes to deduct from an applicant's reimbursement amount the cost of any independent audit associated with a questioned claim, before distributing funds to the applicant.

Regulatory Analyses and Notices

This NPRM is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The NPRM proposes procedures to provide reimbursement to eligible applicants from funds appropriated by Congress. The Department administers a number of programs entailing similar procedures. This NPRM therefore does not represent a significant departure from existing regulations and policy. Furthermore, once implemented, this rule would have only minimal cost impacts on regulated parties.

Federalism

This rule does not directly affect States, the relationship between the national government and the States, or the distribution of power among the national government and the States, such that consultation with States and local governments is required under Executive Order 13132.

Regulatory Flexibility Act

The Department certifies that this rule would not have significant economic effects on a substantial number of small entities. In the aggregate, the cost among all applicants for gathering information and submitting an application should range from $2,501 to $5,003.

Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act of 1995, specifically the application documents that fixed-based general aviation operators and providers of general aviation ground support services must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures (and Form) for Reimbursement of General Aviation Operators and Service Providers in Washington, DC Area.

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The Department of Transportation would use the data submitted by the fixed-based general aviation operators and providers of general aviation ground support services to determine their reimbursement for direct and incremental financial losses incurred while the airports were closed due to Federal Government actions taken after the terrorist attacks on September 11, 2001.

Frequency: For this final rule, the Department would collect the information once from fix-based general aviation operators and providers of general aviation ground support services.

Respondents: The respondents include an estimated 24 fixed-based general aviation operators and providers of general aviation ground support service. This estimate is based on the number of fixed-based general aviation operators and providers of general aviation ground support services identified in the October 2005 DOT study.

Burden Estimate: Total applicant burden of between $2,501 and $5,003 based on a burden of between three (3) and six (6) hours per applicant and a weighted average cost per hour of $34.74.

Form(s): The data would be collected on the Form entitled, "Background and Eligibility Information for Applicants Filing for Reimbursement Under Section 185 of Public Law 109–115," and included at Appendix A to this part.

Average Burden Hours per Respondent: A weighted average of four (4) hours per application.

The Department has requested approval from the Office of Management and Budget for this information collection.

Other Statutes and Executive Orders

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department must consider in all rulemakings, but which the Department has determined are not sufficiently implicated by this NPRM to require further action. Specifically, this NPRM does not impact the human environment under the National Environmental Policy Act, does not concern constitutionally protected property rights such that Executive Order 12630 is implicated, does not involve policies with tribal implications such the Executive Order 13175 is invoked, does not concern civil justice reform under Executive Order 12988, does not involve the protection of children from environmental risks under Executive Order 13045, and will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Comment Period

This rule concerns a small group of potential applicants and others who might be interested, and the Department believes that most, if not all, are aware of the provisions of the statute. The Department therefore concludes that 30 days is sufficient time for the receipt of comments from the public.

List of Subjects in 14 CFR Part 331

Air transportation, Airports, Airspace, Claims, Grant programs, Reporting and recordkeeping requirements.

Issued this 19th day of September, 2006, at Washington, DC.

Maria Cino,

Acting Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to add 14 CFR part 331 to read as follows:

PART 331—PROCEDURES FOR REIMBURSEMENT OF GENERAL AVIATION OPERATORS AND SERVICE PROVIDERS IN THE WASHINGTON, DC AREA

Subpart A—General Provisions

Subpart A—General Provisions

§ 331.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 185 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006 ("the Act" or "the 2006 Appropriation Act"), Public Law 109–115, 119 Stat. 2396. Section 185 is intended to reimburse certain fixed-based general aviation operators or providers of general aviation ground support services at five airports in the Washington, DC metropolitan area for direct and incremental losses due to the actions of the Federal Government to close airports to general aviation operations following the terrorist attacks of September 11, 2001.

§ 331.3 What do the terms used in this part mean?

The following terms apply to this part:

Airport means Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; or Washington South Capitol Street Heliport in Washington, DC.

Closed or *closure* means the period of time until the first general aviation operations were generally permitted at Ronald Reagan Washington National Airport; until November 30, 2005 at Washington South Capitol Street Heliport; or the earliest that transient traffic was generally permitted to return to the three Maryland airports.

Department means the U.S. Department of Transportation and all its components, including the Office of the Secretary (OST) and the Federal Aviation Administration (FAA).

Direct and incremental losses means losses incurred by a fixed-based general aviation operator or a provider of general aviation ground support services as a result of the Federal Government's closure of an airport following the terrorist attacks against the United States on September 11, 2001. These losses do not include any losses that would have been incurred had the terrorist attacks on the United States of September 11, 2001 not occurred.

Fixed-based general aviation operator means an entity based at a particular airport that provides services to and support for general aviation activities, including the provision of fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing, and the provision of air charter services. The term does not include an entity that exclusively provides products for general aviation activities (*e.g.* a parts supplier).

Forecast or forecast data means a projection of revenue and expenses during the eligible reimbursement period had the attacks of September 11, 2001 not occurred.

Incurred means to become liable or subject to (as in "to incur a debt").

Loss means something that is gone and cannot be recovered.

Provider of general aviation ground support services means an entity that does not qualify as a fixed-based general aviation operator but operates at a particular airport and supplies services, either exclusively or predominantly, to support general aviation activities, including flight schools or security services. The term does not include an entity that exclusively provides products for general aviation activities (*e.g.* a parts or equipment supplier).

You means fixed-based general aviation operators or providers of general aviation ground support services.

§ 331.5 Who may apply for reimbursement under this part?

If you are an eligible fixed-based general aviation operator or provider of general aviation ground support services (collectively "operators or providers") at an eligible airport or airports in the Washington, DC area, you may apply for reimbursement for direct and incremental losses under this part. If you are applying for reimbursement based on losses at more than one airport, then you must submit separate applications for each airport. For example, if you are a provider of general aviation ground support services at Ronald Reagan Washington National Airport and Potomac Airfield in Fort Washington, Maryland, you must submit two separate applications.

§ 331.7 What losses will be reimbursed?

(a) You may be reimbursed for the difference between the net income you actually or reasonably forecast for the eligible reimbursement period and the actual net income you earned during the eligible reimbursement period. If you did not forecast net income for the eligible reimbursement period or any part of the eligible reimbursement period, you may be reimbursed for the difference between what you can show you would have reasonably expected to earn as net income during that period had the airport at which you are or were an operator or provider not closed, and the actual net income you earned during the eligible reimbursement period.

(b) If you make a claim for extraordinary, non-recurring, or unusual adjustments, you must demonstrate that such adjustments were fully attributable to the Federal Government's closure of the five Washington-area airports, are in conformity with Generally Accepted Accounting Principles, were fully borne within the statutory reimbursement period, that the loss was not discretionary in nature, and that reimbursement would not be duplicative of other relief.

(c) A temporary loss that you recovered after the attacks of September 11, 2001, or that you expect to recover, is not eligible for reimbursement under this part. You will not be reimbursed for those losses incurred through your own fault, negligence, or violation of law, or because of the actions of a third party (*e.g.* an airport).

(d) If you engaged in any non-aviation income-producing activities after September 11, 2001, such income must be reported under question number 5 on the Background and Eligibility Form.

(e) So called "cost savings" claims (*i.e.* increasing the claimed amount of reimbursement by reducing actual expenses to "adjust" for savings in expense categories asserted not to have been affected by the terrorist attacks) are not eligible for reimbursement.

(f) You cannot claim reimbursement for the lost time value of money (*i.e.* interest on lost profits for the period of time the funds were not available for your use).

(g) Lobbying fees and attorneys' fees are not eligible for reimbursement.

(h) Your calculation of revenues, expenses and income must be based on financial documents maintained in the ordinary course of business that were prepared for the eligible reimbursement period, such as income statements, statements of operations, profit-and-loss statements, operating forecasts, budget documents or other similar documents.

§ 331.9 What funds will the Department distribute under this part?

The Department will distribute the full amount of reimbursement it determines is payable to you under section 185 of the Act.

§ 331.11 What are the limits on reimbursement to operators or providers?

(a) You are eligible to receive reimbursement subject to the subpart C set-aside for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The amount available to you as reimbursement may be reduced to cover the cost of independent verification and auditing, as set forth in Section 331.17.

(b) If you receive more reimbursement than the amount to which you are entitled under section 185 of the Act or the subpart C set-aside, the Department will notify you of the basis for the determination and the amount that you must repay to the Department. The Department will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) to the extent required by law, in recovering such overpayments.

(c) Payment will not be made to you until you have agreed to release the United States Government for all claims for financial losses resulting from the closure of the five airports in the Washington, DC area. The Department will provide a release form to applicants that must be completed before any payment is made under Section 185.

§ 331.13 What is the eligible reimbursement period under this part?

The eligible reimbursement period for direct and incremental losses differs by airport:

(a) For Ronald Reagan Washington National Airport the eligibility period for reimbursement is from September 11, 2001 until October 18, 2005.

(b) For College Park Airport in College Park, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(c) For Potomac Airfield in Fort Washington, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(d) For the Washington South Capitol Street Heliport in Washington, DC, the eligibility period for reimbursement is from September 11, 2001 to November 30, 2005.

(e) For Washington Executive/Hyde Field in Clinton, Maryland, there are two eligibility periods for reimbursement. The first period is from September 11, 2001 until May 16, 2002. The second period is from September 29, 2002 until February 13, 2005.

§ 331.15 How will other grants, subsidies, or incentives be treated by the Department?

Grants, subsidies, or incentives that you have received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities, will be considered revenues and should be reported as such on your application.

§ 331.17 How will the Department verify and audit claims under this part?

Departmental staff will initially review each claim in detail, and contact you should questions arise. If they are unable to satisfactorily resolve the matter following consultation with you, your claim will be forwarded to the Office of the Inspector General, or another independent auditor, for verification and, if necessary, an audit. In addition, the Department may consult with, or make referrals to, other government agencies, including the Department of Justice.

§ 331.19 Who will approve reimbursement once an application has been received and a claim has been verified and/or audited?

The Assistant Secretary of Aviation and International Affairs will make a final determination of your eligibility and authorize reimbursement to you.

Subpart B—Application Procedures

§ 331.21 What information must operators or providers submit in their applications for reimbursement?

(a) You must submit the form entitled *Background and Eligibility Information for Applicants Filing for Compensation Under Section 185 of Public Law 109–115* ("Background and Eligibility Form"), which is found in Appendix A to this part, along with the profit and loss statements, forecasts, or other financial documents (collectively "supporting financial documents") generated as a routine matter for the purposes of managing your business, and relied upon in completing your application.

(b) To the extent that your calculation of revenues, expenses and incomes are based on monthly records, you must adjust your calculation, on a pro-rata basis, to conform to the eligibility period. For example, if you utilize a monthly financial record to prepare a calculation of your September 2001 revenues, you should apportion your results for the period between September 11 and September 30, 2001.

(c) If multiple forecasts were prepared for the same period, you must utilize the one most recently approved, prior to September 11, 2001, so long as it is otherwise objective and reliable.

(d) If you provided information to the Department as part of its study entitled *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area (Oct. 2005)* ("2005 General Aviation Study"), you should not simply reiterate the same data provided to the Department at that time; you must provide the most current information that is available to you. If you do reiterate that same data provided to the Department for the 2005 General Aviation Study, the basis for your estimates must be verifiable from the supporting financial documents that you submit with your application.

(e) Failure to include all required information will delay consideration of your application by the Department and may result in a rejection. You have the burden to document and substantiate your claim; the Department will provide reimbursement only if it is satisfied that payment is fully supported.

(f) If, prior to September 11, 2001, you did not prepare a forecast covering the entire eligible reimbursement period, or if the forecast you completed is not relevant to the information required by this part, you may submit an "after-the-fact" estimate of the amount that you would have reasonably expected to accrue as net income had the airport at which you are or were an operator or

provider not closed. "After-the-fact" estimates must consider items particular to your business, including labor agreements and the terms of contracts in place at the time of the eligible reimbursement period, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, and other similar documents. You must explain the methodology that you used when preparing your reconstructed forecast.

(g) You must certify that the information on the Background and Eligibility Form and all of the supporting financial documents that you are submitting is true and accurate under penalty of law and that you acknowledge that falsification of information may result in prosecution and the imposition of a fine and/or imprisonment.

(h) You must retain all materials you relied upon to establish your claim for losses.

(i) You must provide mitigating expenses, lobbying expenses, and special expenses, as well as extraordinary adjustments, as instructed on the Background and Eligibility Form.

(j) If you believe that the release of financial information provided to the Department in support of your application would cause you substantial harm if released by the Department to the public upon an appropriately made request, you may request that the Department hold portions of your application as confidential. Your request must specify the portions of your application that should be held by the Department as confidential, and you must provide an explanation as to how the release of such information would cause you substantial harm.

§ 331.23 In what format must applications be submitted?

(a) Appendix A of this part must be submitted in hardcopy format and, if possible, in electronic format. The Department has made available an electronic version of this form at the following Web site: *http://ostpxweb.dot.gov/aviation/index.html.* (Click on "Programs.")

(b) All supporting financial documents must be submitted in electronic format utilizing a 3.5″ inch floppy disk, compact disk, or flash memory stick.

(c) Faxed and e-mailed applications are not acceptable and will not be considered.

§ 331.25 To what address must operators or providers send their applications?

(a) You must submit your application and all required supporting information, to the following address: U.S. Department of Transportation, Aviation Relief Desk (X–50), 400 7th Street, SW., Washington, DC 20590.

(b) Your application must be submitted via courier or an express package service, such as Federal Express, UPS, or DHL.

(c) If complete applications are not submitted to the address in paragraph (a) of this section, they will not be accepted by the Department.

§ 331.27 When are applications due under this part?

You must submit your application within 30 calendar days from the effective date of the final rule.

Subpart C—Set-Aside for Operators and Providers at Certain Airports

§ 331.31 What funds are available to applicants under this subpart?

The Department is setting aside a sum of $5 million to reimburse eligible operators or providers, as set forth in section 185 of the Act.

§ 331.33 Which operators and providers are eligible for the set-aside under this subpart?

Operators or providers at the following three airports during the eligible reimbursement periods are eligible for the set-aside:

(a) College Park Airport in College Park, Maryland;

(b) Potomac Airfield in Fort Washington, Maryland; and

(c) Washington Executive/Hyde Field in Clinton, Maryland.

§ 331.35 What is the basis upon which operators or providers will be reimbursed through the set-aside under this subpart?

Operators or providers eligible under this subpart will be reimbursed pursuant to the same procedures set forth in subpart B of this part. If total losses for all eligible claims at the three airports set forth in § 331.31 of this part are less than $5 million, then such claims will be paid in full. If the total losses for all eligible claims at the three airports set forth in § 331.31 of this part exceed $5 million, then the total losses will be divided on a pro rata basis, and a proportionate amount for each claim will be distributed to applicants.

BILLING CODE 4910–9X–P

Appendix A to Part 331 – Background and Eligibility Information for Applicants Filing for Reimbursement Under Section 185 of Public Law 109-115

APPENDIX A

Background and Eligibility Information For Applicants Filing for Reimbursement Under Section 185 of Public Law 109-115

1. Applicant name: _____

2. Applicant address:

_____

_____

_____

3. At which of the following airports did the applicant operate as a fixed-based operator or provider of general aviation ground support services on September 11, 2001?

- Ronald Reagan Washington National Airport ☐

- College Park Airport in College Park, Maryland ☐
- Potomac Airfield in Fort Washington, Maryland ☐
- Washington Executive/Hyde Field in Clinton, Maryland ☐
- Washington South Capitol St. Heliport, Washington, D.C. ☐

4. Briefly describe the nature of the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

_____

_____

_____

_____

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5. Did the applicant or any part of it conduct non-fixed-based general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

☐ Yes. Briefly describe the non-fixed-based general aviation activities and non-aviation ground support services.

☐ No.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services.

7. In response to the events of September 11, 2001, did the applicant take any action to lessen or offset the impact of those events?

☐ Yes. Briefly describe those actions and the effect they had on the applicant.

_____

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_____

☐ No.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

☐ Yes. Specify the filing status under which the applicant filed (corporation, partnership, sole proprietorship, etc.?

☐ No.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

10. By regulation, the requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses) with a company forecast/budget of operating results that existed prior to September 11, 2001 if such a forecast/budget was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document it reasonably expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

11. Reimbursement Claim

Financial Data				
		Column A	Column B	Column C
		Pre 9-11-01 Forecast or After-the Fact Estimate for the Eligible Period*	Actual Results for the Eligible Period*	Column A Minus Column B
Line 1	Total Operating Revenues			
Line 2	Total Operating Expenses			
Line 3	Total Operating Income or (Loss)			
Line 4	Non-operating Revenue			

Line 5	Non-operating Expenses			
Line 6	Non-operating income(loss)			
Total	Line 3 plus line 6			

* The table above applies to the period 9-11-01 through 2-13-05 for the three Maryland airports, including Washington Executive/Hyde Field. However, for Hyde Field please prepare separate claims for the periods before, during, and after the ineligible period, 5-17-02 through 9-28-02. For Ronald Reagan Washington National Airport, the eligible period is from 9-11-02 through 10-18-05 and for Washington South Capitol Street Heliport, the period is from 9-11-01 through 11-30-05.

Lobbying expenses are to be excluded from both Columns A and B.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation Transportation Security Act (ATSA) Public Law 107-71 November 19, 2001, Airport Improvement Program (AIP)).

☐ Yes. Enter amount = $_____

☐ No

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned "What information must operators or providers submit in their applications for reimbursement?"), or extraordinary, non-recurring, or unusual adjustments?

☐ Yes. Briefly describe these expenses and the amount of each, and state if they have been included in or excluded from the totals in the table at item number11.

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☐ No

14. Certification

I certify the above information and all attached documents as true and accurate under penalty of law, and acknowledge that falsification of information may result in prosecution and imposition of a fine and/or imprisonment.

_____

Signature of Company Official

_____

Printed Name of Company Official

_____

Position (CEO, COO, or CFO) of Company Official

Phone Number of Company Official: (voice) _____

(fax)_____

Date _____

_____

Name of Contact Person (if different from above)

_____

Position of Contact Person (if different from above)

Phone Number of Contract Person: (voice) _____

(fax)_____

Email Address of Contact Person:_____

Instructions for Completing Background and Eligibility Information for Applicants Filing for Reimbursement Under Section 185 of Public Law 109–115

1. Applicant name

This is the person or legal entity who undertakes to act as a fixed-based general aviation operator or who provides general aviation ground support services, directly or by a lease or any other arrangement.

2. Applicant address

The applicant address is that location within the local tax authority jurisdiction that is held out to the public as the business or airport address.

3. Airport of operation on September 11, 2001

This question asks the applicant to identify those airports in the Washington, DC area where it provided either fixed-based general aviation services or general aviation ground support services on September 11, 2001. Check as many airports as you served on September 11, 2001.

4. Briefly describe the nature of the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

You should describe the specific fixed-based general aviation services or general aviation ground support services that you provided at each of the airports.

5. Did the applicant or any part of it conduct non-fixed-based general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

Check "Yes" if you conducted any non-fixed-based general aviation activities or provided non-aviation ground support services during the 2001 through 2005 period. Describe the activities that you undertook during this period that did not directly support general aviation at the airport.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services.

You should describe how the level and conduct of your operations as a fixed-based general aviation operator or your operations as a provider of general aviation ground support services were changed as a result of September 11, 2001 and the ensuing security restrictions that were imposed by the Federal Government.

7. Did the applicant undertake any actions to lessen or offset the impact of the Federal Government's closure of airports in the Washington, DC area following the attacks of September 11, 2001?

Check "Yes" if you attempted to minimize the impact that the terrorist attacks of September 11, 2001, had on your business. Briefly describe your actions and the effect that they had on you. Include any activities or services undertaken after September 11, 2001 that did not provide support for general aviation but that did provide revenues to sustain your business.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

Check "Yes" if you filed income taxes during this period, and indicate the filing status under which you filed your income tax returns.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

This question directs applicants to provide the Department with certain financial documents in order to verify and substantiate their claims. Documents that you have already prepared should be sufficient. When necessary, you should supplement these documents with footnotes or explanations that are pertinent to your reimbursement claim. The financial data may include such documents as income statements, statements of operations, forecasts of operating results, income projections, pro forma budget projections, budget documents, tax preparation support material, information presented in investment perspectives and registrations, or other similar information that in whole or in part cover the period from 1999 through 2005.

10. By regulation, the requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses) with a company forecast of operating results that existed prior to September 11, 2001 if such a forecast was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document it reasonably expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

Indicate here whether an "after-the-fact" forecast was prepared, and briefly describe the methodology used in preparing the forecast. Your methodology must take into account items relevant to your businesses, such as the terms of existing contracts, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, existing labor agreements and leasing agreements, and other similar types of documents.

In preparing your "after-the-fact" forecast, you may wish to consult a July 2001 report prepared for the FAA, entitled *Forecasting Aviation Activity by Airport*. This report was prepared by GRA, Incorporated (GRA), for the FAA's Office of Aviation Policy Plans Statistical and Forecast Branch (APO–110). While the Department recognizes that fixed based general aviation operators and providers of general aviation ground support services are different entities from airports, the Department believes that this document offers relevant guidance to applicants who do not prepare forecasts as part of regular business operations. This July 2001 report may be accessed at: *http://www.faa.gov/data_statistics/aviation_data_statistics/forecasting/media/AF1.doc*.

The July 2001 report explains the basic steps usually utilized in preparing forecasts, including: Identifying parameters and measures to forecast; collecting forecast information of expected revenues or expenses, including budgets; gathering and evaluating data; selecting a forecast method (such as regression and trend analysis, share analysis, or exponential smoothing); applying methods and evaluating results; and summarizing and documenting the results.

Additionally, data sources to assist you in making adjustments to your forecast are available from the Department's Web site at *http://ostpxweb.dot.gov/aviation/index.html* (Click on "Programs"). The Department notes that, while it can answer questions for applicants that might arise while applicants develop forecasts, the Department is not in a position to propose or develop projections for applicants.

11. Reimbursement Claim

For purposes of completing the information in the reimbursement claim table, total operating revenues (line 1) include the inflow of funds to the applicant resulting from the sale of goods and services related to the activities of a fixed-based operator or a provider of general aviation services. Examples include, but are not limited to monetary amounts or value received for providing: Aircraft fuel or oil; delivery of aircraft fuel or oil; transient and long-term storing, tie down parking and sheltering of aircraft; maintenance, inspection, checking, upgrading of aircraft and aircraft related equipment and for polishing and cleaning property and equipment; for providing flight instruction services and materials; and miscellaneous items for purchase such as maps, books, flight clothing, sectional charts, devices and parts for aircraft, food services, hospitality services, auto rentals, aircraft custodial and sanitation services.

Total operating expenses (line 2) include the cost to the applicant of providing the goods and services related to the activities of a fixed-based operator or a provider of general aviation services. Examples include, but are not limited to: Labor costs for all categories of employees (including compensation, vacation and sick leave pay, medical benefits, workmen's compensation contributions, accruals or annuity payments to pension funds, training reimbursements, professional fees, licensing fees, educational or recreational activities for the benefit of the employee, stock incentives, etc.); the cost of fuel and oil including nonrefundable aircraft fuel and oil taxes; insurance; flight and ground equipment parts; general services purchased for flight or ground equipment maintenance; depreciation of flight and ground equipment; amortization of capitalized leases for flight and ground equipment; provisions for obsolescence and deterioration of spare parts; and rental expenses of flight and ground equipment. Advertising, promotion and publicity expenses, landing fees, clearance, customs and duties, utilities, bookkeeping, accounting, recordkeeping and legal services are also part of the total operating expenses.

For reasons set forth elsewhere in section 331.7 of this Part, you may not include lobbying expenses.

Total operating income or loss is calculated by subtracting the total operating expenses from the total operating revenues. If the total operating revenues exceed the total operating expenses, the calculation results in a total operating income. If the total operating expenses exceed the total operating revenues, the calculation results in a total operating loss.

Non-operating revenue and expenses include: Income and loss incident to commercial ventures not inherently related to the direct provision of fixed-based operator services or general aviation ground support services; other revenues and expenses attributable to financing or other activities that are extraneous to and not an integral part of general aviation services; and special recurrent items of a nonperiod nature.

Examples of non-operating income include, but are not limited to: interest income; foreign exchange gains; equity income of an investor controlled company; intercompany transactions; dividend income; net unrealized gains on marketable equity securities; and capital gains.

Examples of non-operating expenses include, but are not limited to: interest on long-term debt and capital leases; interest on short-term debt; imputed interest capitalized; amortization of discount and expense on debt; foreign exchange losses; fines or penalties imposed by governmental authorities; costs related to property held for future use; donations to charities, social and community welfare purposes; losses on reacquired and retired or resold debt securities; and losses on uncollectible non-operating receivables.

Non-operating income is the result of subtracting the non-operating expenses from the non-operating revenues.

Total income in the sum of the total operating income or (loss)(line 3) plus line 6 non-operating income.

The difference between column A and B is the basis for column C. This constitutes the total amount of your claim for reimbursement.

As the eligibility periods, for the most part, begin and end on days other than the first or last days of the month, quarter or year, data from already existing financial statements must be adjusted, on a pro-rata basis, to reflect the eligibility periods. For example, the period of eligibility for all applicants begins on September 11, 2001 and therefore, the only time period during the month of September that is eligible for reimbursement is September 11 through September 30, a period of 20 days. Applicants should be prepared to show both how they apportioned such financial data into the reimbursement periods, and why they chose the apportionment approach used. Applicants

can then use these estimates for the specified periods at the beginning and end of the eligible period to add to the financial amounts for 2002, 2003, and 2004 to calculate the total amounts sought in Appendix A.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation and Transportation Security Act of 2001 (Public Law 107–38) and the Airport Improvement Program under the Airport and Airway Improvement Act of 1982 (Public Law 97–248).)

This question requires that you disclose all grants, subsidies, or incentives that you received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities.

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned "What information must operators or providers submit in their applications for reimbursement?"), or extraordinary adjustments.

Check "Yes" if you incurred any such expenses or experienced any such adjustments. You must briefly describe the nature of such expenses and adjustments, including the amounts. Additionally, you must indicate whether or not such expenses or adjustments have been included in or excluded from the totals in the table at item number 11.

Lobbying includes any amount paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

Mitigating expenses include the utilization of property, the provision of services and the sale of goods that were undertaken to mitigate losses arising from the Federal Government's closure of airports attendant to the September 11, 2001 attack. These could include expenses incurred for the provision of services and sale of goods moved from restricted airports to unrestricted airports or compensation for non-aviation oriented goods and services provided at restricted airports. Mitigating expenses may also include expenses for aviation-related fixed assets or capital utilized outside of the restricted airport.

Special expenses include, but are not limited to, moving expenses, additional security equipment and facilities, and loss on sale of assets that arose from the direct imposition of restrictions during the period September 11, 2001 through the applicable eligible date. Any item reported as Special Expenses shall not also be expensed in other expense categories that are reflected in the calculation of the reimbursement claim. Details regarding special expenses should be noted in footnotes.

Extraordinary adjustments are events or transactions that are material to your business and unusual in nature and infrequent in occurrence.

14. Certification

You must certify that all information contained on the Background and Eligibility Form *and* the documents submitted in support of your application (*e.g.* profit and loss statements, actual forecasts, after-the-fact forecasts, etc.) are accurate. This certification is made under penalty of law. Falsification may be grounds for monetary and/or criminal sanctions. This certification must be made by a company CEO, COO, or CFO.

[FR Doc. 06–8250 Filed 10–3–06; 8:45 am]
BILLING CODE 4910–9X–C

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

[Docket No. DEA–282P]

RIN 1117–AB03

Authorized Sources of Narcotic Raw Materials

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: DEA proposes to amend its regulations to update the list of non-traditional countries authorized to export narcotic raw materials (NRM) to the United States. This change would replace Yugoslavia with Spain. This proposed rule seeks to maintain a consistent and reliable supply of narcotic raw materials from a limited number of countries consistent with United States obligations under international treaties and resolutions.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before December 4, 2006.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–282P" on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/Liaison and Policy Section (ODL). Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Legal Authority

DEA enforces the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*), as amended. DEA regulations implementing this statute are published in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1399. These regulations are designed to establish a framework for the legal distribution of controlled substances to deter their diversion for illegal purposes and to ensure an adequate and uninterrupted supply of these drugs for legitimate medical purposes. The CSA and its implementing regulations are consistent with United States treaty obligations that, among other things, address the production, import, and export of controlled substances.

Controlled Substances

Controlled substances are drugs that have a potential for abuse and addiction; these include substances classified as opiates, stimulants, depressants, hallucinogens, anabolic steroids, and drugs that are immediate precursors of these classes of substances. DEA lists controlled substances in 21 CFR part 1308. The substances are divided into five schedules: Schedule I substances have a high potential for abuse and have no accepted medical use. These substances may only be used for research, chemical analysis, or manufacture of other drugs. Schedule II–V substances have an accepted medical use and also have a

potential for abuse and addiction. Narcotic raw materials (opium, poppy straw, and concentrate of poppy straw (CPS)) are in Schedule II and are the materials from which morphine, codeine, and thebaine are extracted for purposes of manufacturing a number of Schedule II controlled substances.

Sources of Narcotic Raw Materials

In May 1979, the United Nations' Economic and Social Council (ECOSOC) adopted Resolution 471, which called on importing countries such as the United States to support traditional suppliers of narcotic raw materials (NRM) and to limit imports from non-traditional supplying countries. The resolution, which was reaffirmed by ECOSOC in 1981, was adopted to limit overproduction of NRM, to restore a balance between supply and demand, and to prevent diversion to illicit channels. The United States, based on long-standing policy, does not cultivate or produce NRM, but relies solely on opium, poppy straw, and CPS produced in other countries for the NRM necessary to meet the legitimate medical needs of the United States. In response to Resolution 471, on August 18, 1981, DEA published a final rule specifying certain source countries of NRM (46 FR 41775); the rule is frequently referred to as the 80/20 rule. Under the final rule, currently codified as 21 CFR 1312.13(f) and (g), NRM can be imported from one of only seven countries. Traditional suppliers India and Turkey must be the source of at least 80 percent of the United States' requirement for NRM. Five countries—France, Poland, Hungary, Australia, and Yugoslavia—may be the source of not more than 20 percent. The United States continues to reaffirm its support of the original resolution by supporting similar resolutions each year at the CND.

Recently, DEA registered importers of NRM have imported approximately 90 percent of NRM from traditional suppliers India and Turkey. India is the only country that cultivates poppies for production of opium. All other exporting countries use the CPS method of NRM production, a method that allows the plant to go to seed; portions of the plant are then processed into a concentrate. It is generally believed that CPS is less divertible than opium. CPS may be rich in morphine (CPS–M) or rich in thebaine (CPS–T). The United States imports the majority of its CPS–M from Turkey, with Australia supplying much of the balance.

The 80/20 rule was established based on traditional import amounts and on the U.N. resolution calling on member nations to support traditional sources that have been reliable suppliers and that take measures to curtail diversion. The United States allowed a limited number of non-traditional suppliers to have access to the United States market based on past commercial relationships and on the desirability of preserving alternative sources. This approach was consistent with the U.N. Resolution because it supported India and Turkey, and ensured an adequate and uninterrupted supply of NRM, while limiting the number of supplying countries. DEA continues to support the 80/20 rule.

On June 6, 2005, the Government of Spain petitioned DEA seeking to be added to the list of non-traditional suppliers. Spain stated four reasons that granting its petition would be consistent with United States interests:

- The change would be consistent with the 80/20 rule because it maintains India and Turkey as the two traditional supplier countries, that is, Spain does not seek to be added to the list of traditional suppliers.
- The change would ensure adequate supplies of NRM.
- The change would not result in diversion because Spain maintains strict control and oversight over the cultivation and distribution of NRM.
- The change would allow DEA to monitor diversion and maintain cost-effective supplies.

In its petition, Spain explained that in the early 1970s, Spanish pharmaceutical firms sought authorization to cultivate opium poppies to produce NRM. In 1973, Spain authorized a single firm, Alcaliber, to cultivate, harvest, store, and prepare extracts from the opium poppy. Spain is now the fifth largest cultivator of opium poppies; Spain is the fourth largest producer of CPS and the third largest exporter of CPS–M.[1] Spain has ratified international agreements to control production and commerce in opium products. In accordance with these international agreements, Spain has implemented a comprehensive regulatory regime for controlling the cultivation, production, and export of NRM. The petition stated that this control ensures that NRM produced in Spain are not diverted to illicit uses.

DEA has reviewed the petition and is proposing to change the list of non-traditional suppliers to remove Yugoslavia and replace it with Spain. DEA has determined that the successor states to the former Yugoslavia no longer produce NRM for export. Therefore, replacing Yugoslavia with Spain will continue to limit the number of non-traditional suppliers to the United States while ensuring that an adequate number of sources of NRM are available. The change does not otherwise affect how the 80/20 rule is implemented.

[1] "Narcotic Drugs: Estimated World Requirements for 2005—Statistics for 2003", Tables II and XIII; International Narcotics Control Board (E/INCB/2004/2).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that he has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small business entities. The proposed rule imposes no new costs or burden on small entities.

Executive Order 12866

The Deputy Assistant Administrator, Office of Diversion Control, further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This proposed rule does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $117,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1312

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1312 is proposed to be amended as follows:

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

1. The authority citation for Part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

2. Section 1312.13 is proposed to be amended by revising paragraphs (f) and (g) to read as follows:

§ 1312.13 Issuance of import permit.

* * * * *

(f) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the Administrator shall permit, pursuant to 21 U.S.C. 952(a)(1) or (a)(2)(A), the importation of approved narcotic raw material (opium, poppy straw and concentrate of poppy straw) having as its source:

(1) Turkey,

(2) India,

(3) Spain,

(4) France,

(5) Poland,

(6) Hungary, and

(7) Australia.

(g) At least eighty (80) percent of the narcotic raw material imported into the United States shall have as its original source Turkey and India. Except under conditions of insufficient supplies of narcotic raw materials, not more than twenty (20) percent of the narcotic raw material imported into the United States annually shall have as its source Spain, France, Poland, Hungary and Australia.

Dated: September 26, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E6–16325 Filed 10–3–06; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–RO1–UST–2006–0622; FRL–8226–6]

New Hampshire: Final Approval of Underground Storage Tank Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of New Hampshire has applied to EPA for approval of the changes to its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has determined that these amendments satisfy all requirements needed for program approval and proposes to approve the State's changes. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this approval in the preamble to the immediate final rule. Unless we get written comments which oppose this approval during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by November 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–UST–2006–0622, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: hanamoto.susan@epa.gov.*
- *Mail:* Susan Hanamoto, Office of Underground Storage Tanks, EPA Region I, One Congress Street, Suite 1100 (Mail Code: HBO), Boston, MA 02114–2023.
- *Hand Delivery:* Susan Hanamoto, Office of Underground Storage Tanks, EPA Region I, One Congress Street, Suite 1100 (Mail Code: HBO), Boston, MA 02114–2023. Such deliveries are only accepted during the EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–UST–2006–0622. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under Docket ID No. EPA–R01–UST–2006–0622. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Region I Library, One Congress Street, 11th Floor, Boston, MA 02114–

2023; business hours Tuesday through Thursday 10 a.m. to 3 p.m., telephone: (617) 918–1990; or the New Hampshire Department of Environmental Services, Public Information Center, 29 Hazen Drive, Concord, NH 03302–0095; Phone Number: (603) 271–2919 or (603) 271–2975; Business hours: 8 a.m. to 4 p.m., Monday–Friday. Records in these dockets are available for inspection and copying during normal business hours.

FOR FURTHER INFORMATION CONTACT: Susan Hanamoto, Office of Underground Storage Tanks, EPA Region I, One Congress Street, Suite 1100 (Mail Code: HBO), Boston, MA 02114–2023, *telephone:* (617) 918–1219, *e-mail: hanamoto.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: September 20, 2006.

Robert W. Varney,

Regional Administrator, EPA Region I.

[FR Doc. E6–16376 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 591, 592, 593, and 594

[Docket No. NHTSA–06–25715]

Federal Motor Vehicle Safety Standards (FMVSS); Small Business Impacts of Motor Vehicle Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of regulatory review; Request for comments.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) seeks comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, motorcycles, and motor vehicle equipment.

DATES: Comments must be received on or before December 4, 2006.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. You may call Docket Management at: (202) 366–9329. You may visit the Docket from 9 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Juanita Kavalauskas, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. *Telephone:* (202) 366–2584. *Facsimile (fax):* (202) 366–4396.

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all of its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, "we") has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process-an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ended in the fall of 1999; Year 2 (1999) began in the fall of 1999 and ended in the fall of 2000; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review. The following table shows the 10-year analysis and review schedule:

NHTSA Section 610 Review Plan

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	1999	2000
3	49 CFR 571.101 through 571.110 and 571.135	2000	2001
4	49 CFR parts 529 through 579, except part 571	2001	2002
5	49 CFR 571.111 through 571.129 and parts 580 through 588	2002	2003

NHTSA SECTION 610 REVIEW PLAN—Continued

Year	Regulations to be reviewed	Analysis year	Review year
6	49 CFR 571.201 through 571.212	2003	2004
7	49 CFR 571.214 through 571.219, except 571.217	2004	2005
8	49 CFR parts 591 through 594	2005	2006
9	49 CFR 571.223 through 571.404, part 500 and new parts and subparts under 49 CFR	2006	2007
10	23 CFR parts 1200 and 1300 and new parts and subparts under 23 CFR	2007	2008

C. Regulations Under Analysis

During Year 8, we will conduct a preliminary assessment of the following sections of 49 CFR parts 591 through 594:

Section	Title
591	Importation of vehicles and equipment subject to Federal safety, bumper and theft prevention standards
592	Registered importers of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards
593	Determinations that a vehicle not originally manufactured to conform to the Federal Motor Vehicle Safety Standards is eligible for importation
594	Schedule of fees authorized by 49 U.S.C. 30141

We are seeking comments on whether any requirements in parts 591 through 594 have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in parts 591, 592, 593, and 594 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

II. Plain Language

A. Background and Purpose

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review parts 591 through 594 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing your comments electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Joseph Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. E6–16422 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU33

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spikedace and Loach Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) designation under the Endangered Species Act of 1973, as amended (Act). This action will allow all interested parties an opportunity to comment on the proposed critical habitat, the draft economic analysis, draft environmental assessment, Tribal management plans and resolutions, and a management plan and economic analysis submitted by Phelps Dodge Corporation, as further discussed below.

Comments previously submitted on the December 20, 2005 (70 FR 75546), proposed rule and on the June 6, 2006 (71 FR 32496), reopening of the comment period need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule.

DATES: We will consider all comments received from interested parties by October 16, 2006. Any comments received after the closing date may not be considered in the final determination on the proposal.

ADDRESSES:

Comments

If you wish to comment on the proposed rule, draft economic analysis, draft environmental assessment, Tribal management plans and resolutions, or a management plan and economic analysis submitted by Phelps Dodge Corporation, you may submit your comments and materials, identified by RIN 1018–AU33, by any of the following methods:

(1) E-mail: *SD_LMComments@fws.gov*. Include RIN 1018–AU33 in the subject line. Please include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Arizona Ecological Services Field Office at (602) 242–0210.

(2) Fax: (602) 242–2513.

(3) Mail, hand delivery, or courier: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021.

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

You may obtain copies of the proposed rule, draft economic analysis, draft environmental assessment, Tribal management plans and resolutions, and the Phelps Dodge Corporation's management plan and economic analysis, by mail by contracting the person listed under **FOR FURTHER INFORMATION CONTACT** or by visiting our Web site at *http://www.fws.gov/arizonaes/*. You may also review comments and materials received and review supporting documentation used in preparation of the proposed rule by appointment, during normal business hours, at the Arizona Ecological Services Field Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone, 602–242–0210; facsimile, 602–242–2513).

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2005, we proposed to designate as critical habitat for spikedace and loach minnow approximately 633 stream miles (mi) (1018.7 stream kilometers (km)), which includes various stream segments and their associated riparian areas, including the stream at bankfull width and a 300-foot (91.4 meters) buffer on either side of the stream (70 FR 75546). The proposed designation includes Federal, State, tribal, and private lands in Arizona and New Mexico.

Critical habitat identifies specific areas containing features essential to the conservation of a listed species and that may require special management

considerations or protections. If the proposed critical habitat designation is finalized, section 7(a)(2) of the Act (16 U.S.C. 1531 *et seq.*) would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. During our second comment period (71 FR 32496, June 6, 2006) on the proposed designation of critical habitat for spikedace and loach minnow, Phelps Dodge Corporation submitted documents that include management plans for Eagle Creek in Arizona and the upper Gila River in New Mexico, and an independent economic analysis summarizing their economic concerns for their mining operations in New Mexico and Arizona. We are reopening the comment period to inform the public of our consideration of this information in terms of a potential exclusion of portions of Eagle Creek and the upper Gila River in the final critical habitat designation pursuant to section 4(b)(2) of the Act. Additionally, as noted in our previous reopening of the public comment period (71 FR 32496), we are considering excluding all or portions of the Verde River Unit based on disproportionate economic costs from the final designation per our discretion under section 4(b)(2) of the Act.

As discussed in our proposed rule (70 FR 75546, December 20, 2005), we determined that the following tribes have lands containing features essential to the conservation of the spikedace and loach minnow: Yavapai Apache, San Carlos Apache, and White Mountain Apache. We also proposed to exclude lands of the San Carlos Apache Tribe and lands of the White Mountain Apache Tribe based upon our relationship with the Tribes and their management plans developed for the conservation of the spikedace and loach minnow. During the initial comment period, we received a resolution from the Yavapai-Apache Nation, that we believe provides a conservation benefit to the spikedace and loach minnow on their lands. Thus, based on this new information and our relationship with the Nation we anticipate excluding their lands from the final designation pursuant to section 4(b)(2) of the Act. We are reopening the comment period to allow the public access to relevant documents and an opportunity to comment on these proposed exclusions.

In addition to the specific areas mentioned above, we may consider exclusion of additional areas from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We will base our final determination upon information received or made available for public review during this or the previous public comment periods.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and/or home addresses, etc. but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, including the information submitted by the Tribes and by Phelps Dodge Corporation, will be available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*).

Dated: September 25, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–16423 Filed 10–3–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 192
Wednesday, October 4, 2006

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

Board for International Food and Agricultural Development One Hundred and Forty-Ninth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and forty-ninth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:40 a.m. to 5:15 p.m. on October 18th, 2005 in the Marriott Hotel, 7th and Grand Avenue, Des Moines, Iowa. The meeting is being held in conjunction with the World Food Prize events scheduled for October 19–20 in Des Moines.

In the morning BIFAD will hold its regular business meeting to discuss Title XII, the Agricultural Knowledge Initiative, human capacity building and other items of current interest. In the afternoon, BIFAD will host an open forum with two panel discussions on the overall theme of "Forging Critical Partnerships to Initiate a Green Revolution in Africa."

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact John Rifenbark, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture, Bureau for Economic Growth, Agriculture and Trade, 1300 Pennsylvania Avenue, NW., Room 2.11–004, Washington, DC 20523–2110 or telephone him at (202) 712–0163 or fax (202) 216–3010.

John T. Rifenbark,

USAID Designated Federal Officer for BIFAD, Office of Agriculture, Bureau for Economic Growth, Agriculture & Trade, U.S. Agency for International Development.

[FR Doc. E6–16333 Filed 10–3–06; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Temporary Storage for Rice and Soybean Warehouse Operators Licensed Under the United States Warehouse Act (USWA)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA) announces the conditions under which temporary storage space for the 2006 crops of rice and soybeans may be licensed under the United States Warehouse Act (USWA).

DATES: October 4, 2006.

FOR FURTHER INFORMATION: Contact Roger Hinkle, USWA Program Manager, USDA, Farm Service Agency, Warehouse and Inventory Division, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553; telephone (202) 720–7433; electronic mail: *Roger.Hinkle@wdc.usda.gov*. Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Because the 2006 crop harvest is expected to exceed available commercial storage space in certain areas, FSA has taken actions to ensure adequate availability of storage space at harvest for producers seeking warehouse-stored marketing assistance loans for grain. As a result, FSA and the Commodity Credit Corporation published notices in the **Federal Register** on July 3, 2006 (71 FR 37889), and August 14, 2006 (71 FR 46446), allowing USWA grain licensees to request the licensing of emergency and temporary storage space under the USWA (7 U.S.C. 241 *et seq.*) for wheat, corn and other feed grains under certain conditions. Grain stored in emergency storage space must be removed no later than March 31, 2007, and grain stored in temporary storage space must be removed no later than July 1, 2007. Since the publication of those notices, FSA has received requests from USWA licensees to store rice in temporary storage space and soybeans in both emergency and temporary storage space.

Because soybeans are more susceptible to weather, infestation, and other deteriorating conditions than bulk grains, soybeans are not approved for emergency storage space. FSA will allow licensing of temporary storage space for 2006-crop rice and soybeans under the following terms and conditions:

Temporary Storage Requirements

Such space may be used from the time of initial licensing until March 31, 2007. Temporary storage structures must be operated in conjunction with a USWA-licensed warehouse. In addition:

1. An asphalt, concrete, or other approved base material must be used.
2. Rigid self-supporting sidewalls must be used.
3. Aeration must be provided.
4. Acceptable covering, as determined by FSA, must be provided.
5. The Commodity must be fully insured for all losses.
6. Warehouse operators must meet all financial and bonding requirements of the USWA.
7. Warehouse operators must maintain a separate record of all rice and soybeans stored in temporary grain storage space and must account for rice and soybeans in the Daily Position Record.

Application for Temporary Rice and Soybean Storage

USWA licensees should direct questions regarding the use of temporary rice and soybean storage to Terry Chapman, Chief, Licensing Branch, Warehouse License and Examination Division, at: Kansas City Commodity Office, Mail Stop 9148, P.O. Box 419205 Kansas City, MO 64141–6205, telephone: 816–926–6474; facsimile: 816–926–1774. E-mail: *terry.chapman@kcc.usda.gov*.

Warehouse Operator's Liability

The authorization and licensing of temporary storage space does not relieve warehouse operators of their obligations under the USWA. Warehouse operators are responsible for the quantity and quality of rice and soybeans stored in temporary storage space to the same extent as their liability for licensed storage space. All rice and soybeans stored in temporary storage space is considered a part of the warehouse operator's commingled inventory. The Department of Agriculture strongly

recommends that warehouse operators review their warehouse security plans and conduct a prudent risk assessment in connection with the application of temporary storage space. Warehouse operators may want to pay particular attention to threats that may not have been considered significant in the past and consider restricting access to facilities to authorized personnel only.

Signed in Washington, DC, on September 29, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 06–8490 Filed 9–29–06; 3:23 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; committee charter amendment.

SUMMARY: The Secretary of Agriculture is amending the charter of the Roadless Area Conservation National Advisory Committee, under the authority of the Federal Advisory Committee Act. The amended purpose of the Roadless Area Conservation National Advisory Committee is to provide advice and recommendations to the Secretary on petitions received from States regarding roadless area management received by the Secretary, or his designee, under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28.

FOR FURTHER INFORMATION CONTACT: Bill Supulski, National Roadless Coordinator, at *bsupulski@fs.fed.us* or (202) 205–0948, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), notice is hereby given that the Secretary of Agriculture intends to amend the charter of the Roadless Area National Advisory Committee. The Secretary has determined the work of this Committee is in the public interest and relevant to the duties of the Department of Agriculture. The amended purpose of the Roadless Area Conservation National Advisory Committee is to provide advice and recommendations to the Secretary on petitions received from States regarding roadless area management received by the Secretary, or his designee, under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28. The Advisory Committee will review submitted petitions and provide advice and recommendations to the Secretary within 90 days of receipt of a completed petition. The Committee will also provide advice and recommendations to the Secretary on any subsequent State-specific rulemakings.

This Advisory Committee shall consist of up to 15 members appointed by the Secretary of Agriculture or the Secretary's designee. The Committee Chair will be elected by the members. Officers or employees of the Forest Service may not serve as members of the Advisory Committee. The Advisory Committee shall consist of members who represent diverse national organizations interested in the conservation and management of National Forest System inventoried roadless areas.

Dated: September 29, 2006.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. E6–16378 Filed 10–3–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee (Committee) will meet in Washington, DC. The purpose of this meeting is primarily administrative in nature to review the Committee's amended charter and discuss future Committee mission and scope. Pursuant to its amended charter, the Committee may also provide advice and recommendations to the Secretary on petitions received from States regarding roadless area management received by the Secretary, or his designee, under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28.

DATES: The meeting will be held October 18–19, 2006 from 8 a.m. to 5 p.m each day.

ADDRESSES: The meeting will be held at the Forest Service's Yates Building at 201 14th Street, SW., Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Bill Supulski, National Roadless Coordinator, at *bsupulski@fs.fed.us* or (202) 205–0948, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to the National Roadless Coordinator (contact information listed above) by October 10, 2006. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period at the end of the first day's agenda. To offer oral comment, please contact the National Roadless Coordinator at the contact number above.

Dated: September 29, 2006.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E6–16374 Filed 10–3–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: 2007 Economic Census Covering the Construction Sector.

Form Number(s): CC–23601, CC–23701, CC–23702, CC–23801, CC–23802, CC–23803, and CC–23804.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 299,000 hours.

Number of Respondents: 130,000.

Avg Hours Per Response: 2.3 hours.

Needs and Uses: The 2007 Economic Census Covering the Construction Sector will use a mail canvass,

supplemented by data from Federal administrative records, to measure the economic activity of more than three million establishments classified in the North American Industry Classification System (NAICS).

The construction sector comprises establishments primarily engaged in the construction of buildings and other structures, additions, alterations, reconstruction, installation, and maintenance and repairs. The economic census will produce basic statistics by industry for number of establishments, value of construction work, payroll, employment, selected costs, depreciable assets, and capital expenditures. It also will yield a variety of subject statistics, including estimates of type of construction work done, kind of business activity, and other industry-specific measures. Industry statistics will be summarized for the United States and states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provides essential information for government, business, and the general public. The Economic Census covering the Construction Sector collects information from contractors of all types of construction. Among the important statistics produced by the construction sector are estimates of the value of construction work during the covered year. The Federal government uses the information from the economic census as an important part of the framework for the national accounts, input-output measures, key economic indexes, and other estimates that serve as the factual basis for economic policy-making, planning, and program administration. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographical areas for use in policy-making, planning, and program administration. Finally, industry, business, and the general public use data from the economic census for economic forecasts, market research, benchmarks for their own sample-based surveys, and business and financial decision making.

If the economic census was not conducted, the Federal government would lose vital source data and benchmarks for the national accounts, the input-output tables, and other composite measures of economic activity. Further, the government would lose critical benchmarks for current, sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making and program administration.

Affected Public: Business or other for-profit.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

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

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

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

Dated: September 28, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–16326 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel Monitoring Program for the Pacific Coast Groundfish Fishery.

Form Number(s): None.

OMB Approval Number: 0648–0478.

Type of Request: Regular submission.

Burden Hours: 7,890.

Number of Respondents: 723.

Average Hours per Response: 4 hours to install a VMS; 4 hours per year to maintain a VMS; 5 seconds for an automated position report; 5 minutes to complete and fax a check-in report or to complete an exemption report; 4 minutes for a declaration report.

Needs and Uses: The National Oceanic and Atmospheric Administration (NOAA) has established large irregularly-based rockfish conservation areas off the coasts of Washington, Oregon, and California. In order to allow fishing in or near these areas that does not threaten the conservation objectives, NOAA needs methods to effectively enforce restrictions on the location of fishing and the gear used. NOAA requires certain vessels to install a vessel monitoring system (VMS) that automatically gives hourly position reports. Inactive vessels or vessels fishing outside the monitored area can request an exemption from the automatic reporting requirement. Certain vessels would also be required to declare what gear will be used.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: September 28, 2006.

Gwellnar Banks.

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–16328 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Transactions of U.S. Affiliates With Their Foreign Parents

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before 5 p.m., December 4, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or e-mail *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890 (or e-mail *obie.whichard@bea.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Transactions of U.S. Affiliates, Except a U.S. Banking Affiliate, with Foreign Parent (Form BE–605) and Transactions of U.S. Banking Affiliate with Foreign Parent (Form BE–605 Bank) obtain quarterly sample data on transactions and positions between foreign-owned U.S. business enterprises and their "affiliated foreign groups" (i.e., their foreign parents and foreign affiliates of their foreign parents). The data collected are used in the preparation of the U.S. international transactions accounts, national income and product accounts, and input-output accounts. The data are needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. and foreign economies and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

BEA proposes the following changes to the survey to reduce respondent burden: (1) Redesign Form BE–605 to incorporate all instructions into the form, placing them, for the most part, on the pages facing the items to be reported; convert the most complicated instructions into separate line item questions; and, to further clarify the reporting requirements, include illustrative diagrams adjacent to questions pertaining to the ownership structure of the U.S. business enterprise and its affiliated foreign groups. (2) Delete questions from Form BE–605 and BE–605 Bank requesting information on receipts and payments for services transactions between the U.S. business enterprise and its affiliated foreign groups. BEA will propose to include these questions on its surveys covering trade in services, beginning with the first quarter of calendar year 2007.

II. Method of Collection

Forms BE–605 and BE–605 Bank are quarterly reports that must be filed within 30 days after the end of each quarter (45 days after the final quarter of the respondent's fiscal year) by every U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales or gross operating revenues, or net income (positive or negative) of over $30 million. Potential respondents are those U.S. business enterprises that were required to report in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002, along with those U.S. business enterprises that subsequently entered the direct investment universe. The data collected are sample data covering transactions and positions between foreign-owned U.S. business enterprises and their affiliated foreign groups. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0009.

Form Number: BE–605/BE–605 Bank.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 3,950 per quarter; 15,800 annually.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 15,800.

Estimated Total Annual Cost: $632,000 (based on an estimated reporting burden of 15,800 hours and an estimated hourly cost of $40).

IV. Request for Comments

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

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

Dated: September 28, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–16327 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews

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

SUMMARY: On June 7, 2006, the U.S. Department of Commerce (the Department) published preliminary results in the new shipper reviews of the antidumping order on honey from the People's Republic of China (PRC). *Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews*, 71 FR 32923 (June 7, 2006) (*NSR7 Preliminary Results*). These reviews cover two exporters, Shanghai Taiside Trading Co., Ltd. (Taiside) and Wuhan Shino–Food Trade Co., Ltd. (Shino–Food). The period of review (POR) is December 1, 2004, through May 31, 2005. While we have analyzed the record and comments from interested parties, we have made no changes to the preliminary results based on these comments. However, we have made a slight change to the calculation of Taiside's margin based on the discovery of a clerical error. For these final results, therefore, we have determined that the new shipper review for Shino–Food should be rescinded because the sale made by Shino–Food was not *bona fide*. We have also determined that the sale made by Taiside is *bona fide* and that the sale has been made below normal value.

EFFECTIVE DATE: October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2006, the Department published the preliminary results of

these reviews. *NSR7 Preliminary Results*. Since the *NSR7 Preliminary Results* the following events have occurred:

On June 22, 2006, we extended the time limit for submitting further information to value the factors of production until July 18, 2006. On July 12, 2006, we received a surrogate value submission from Taiside and Shino–Food. On July 18, 2006, we received a rebuttal surrogate value submission from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners).

We invited parties to comment on the *NSR7 Preliminary Results* and received one case brief each from Shino–Food and Taiside, on August 4, 2006,[1] and July 28, 2006, respectively. We received a rebuttal brief from petitioners on August 3, 2006. None of the parties requested a public hearing. On August 18, 2006, the Department implemented the temporary suspension of the new shipper bonding provision in these reviews, in accordance with the Pension Protection Act of 2006, Pub. L. No. 109–280, § 1632, 120 Stat. 780 (2006), which was signed into law on August 17, 2006.[2] The legislation suspended the ability of a U.S. importer to satisfy the antidumping duty deposit requirements by posting a bond or other security deposit in lieu of a cash deposit with U.S. Customs and Border Protection (CBP) during the period April 1, 2006, to June 30, 2009.

On August 28, 2006, the Department extended the deadline for the final results to September 27, 2006. *Honey from the People's Republic of China: Notice of Extension of Time Limit for Final Results of 2004/2005 New Shipper Review*, 71 FR 50885 (August 28, 2006).

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the "Memorandum to the Assistant Secretary: Issues and Decision Memorandum for the Final Results of the 2004–2005 New Shipper Reviews of Honey from the People's Republic of China," dated September 27, 2006 (Issues & Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://www.trade.gov/ia/ . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

New Shipper Status

For these final results, no party contested the *bona fides* of Taiside's sale, therefore we continue to find, as in the *NSR7 Preliminary Results*, that Taiside has met the requirements to qualify as a new shipper during the POR and that Taiside's sale of honey to the United States is an appropriate transaction for a new shipper review. Regarding Shino–Food, as further discussed in the Issues & Decision Memorandum at Comments 1–1c, we are continuing to find that Shino–Food's sale in question was not a *bona fide* sale and that Shino–Food did not meet the requirements to qualify for a new shipper review during the POR. *See NSR7 Preliminary Results* and "Rescission of New Shipper Review," below.

Rescission of New Shipper Review

As discussed in the Issues & Decision Memorandum at Comments 1–1c, because the Department found Shino–Food's single POR sale to be non–*bona fide*, it is not subject to review. Therefore, the Department is rescinding this review because Shino–Food had no reviewable sales during the POR. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) ("{P}ursuant to the rulings of the Court, Commerce may exclude sales from the export price calculation where it finds that they are not bona fide").

Changes since the NSR7 Preliminary Results

We have not made any changes to the margin–specific calculations for Taiside based on comments received from interested parties. However, for these final results, instead of rounding Taiside's gross unit price to two digits after the decimal point, as we did in the preliminary results, we used a more exact gross unit price from Taiside's reported Section C database, which included four digits after the decimal point. This affected the margin calculation for Taiside. For a discussion of this change, please *see* "Memorandum to the File: Seventh Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China for Shanghai Taiside Trading Co., Ltd. (Taiside)," dated September 27, 2006 (Taiside Analysis Memo).

Final Results of Review

We determine that the following antidumping duty margin exists:

Exporter	Margin (percent)
Shanghai Taiside Trading Co., Ltd.	39.63%

For details on the calculation of the antidumping duty weighted–average margin for Taiside, *see* Taiside Analysis Memo. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for honey from the PRC on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. We will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the

[1] On July 28, 2006, we received a case brief from Shino-Food, which we subsequently rejected as containing new information. On August 4, 2006, Shino-Food re-filed its brief, per the Department's instructions, without the new information.

[2] On August 18, 2006, petitioners filed a letter requesting that the Department implement the new bonding provisions and suspend the bonding privileges for Taiside and Shino-Food in accordance with the Pension Protection Act.

weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirement will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act). For subject merchandise produced and exported by Taiside, we will establish a per–kilogram cash deposit rate that is equivalent to the company–specific cash deposit established in this review. With respect to these reviews, the Department will also notify CBP that a cash deposit of 212.39 percent *ad valorem* should be collected for any entries produced/exported by Shino–Food. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

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

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 27, 2006.

James C. Leonard, III

Acting Assistant Secretary for Import Administration.

Appendix I

List of Issues

Company–Specific Issues

Wuhan Shino–Food-Related Issues

Comment 1: Rescission of Shino–Food
Comment 1a: Price & Quantity
Comment 1b: Payment of Freight and Antidumping Duty Expenses
Comment 1c: Other Indicia of Non–Bona Fides Sale

Shanghai Taiside–Related Issues

Comment 2 Appropriate Surrogate Value for Bottles & Caps
Comment 3 Appropriate Surrogate Value for Honey

[FR Doc. 06–8486 Filed 10–3–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–839

Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On May 31, 2006, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted–average dumping margin for Huvis Corporation is listed below in the "Final Results of the Review" section of this notice.

EFFECTIVE DATE: October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Andrew McAllister, Office 1, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3813 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2006, the Department of Commerce ("the Department") published *Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind, and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 30867 (May 31, 2006) ("*Preliminary Results*") in the **Federal Register**.

We invited parties to comment on the *Preliminary Results*. On June 30, 2006, Arteva Specialties S.a.r.l.; d/b/a KoSa; and Wellman, Inc. (collectively, "the petitioners"); and the respondent, Huvis Corporation ("Huvis"), filed case briefs. On July 7, 2006, the petitioners and Huvis filed rebuttal briefs. On July 26, 2006, consistent with 19 CFR 351.301(b)(2) and 19 CFR 351.104(a)(2)(ii)(A), we rejected the petitioners' rebuttal brief because it contained untimely filed new information. On July 27, 2006, we received a revised rebuttal brief from the petitioners.

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber ("PSF"). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.25 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review ("POR") is May 1, 2004, through April 30, 2005.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the September 28, 2006, *Issues and Decision Memorandum for the Fifth Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the Republic*

of Korea ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building ("CRU"). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Partial Rescission

In the *Preliminary Results*, the Department preliminarily rescinded this review with respect to Daehan Synthetic Company, Ltd.[1] ("Daehan"), pursuant to 19 CFR 351.213(d)(3). The Department confirmed using CBP data that Daehan did not ship subject merchandise to the United States during the POR. In addition, we did not receive any evidence from the petitioners that Daehan shipped subject merchandise to the United States during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), we are rescinding this review with respect to Daehan.

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than normal value, we compared export price ("EP") to the NV. We calculated EP, NV, constructed value ("CV"), and the cost of production ("COP"), based on the same methodologies used in the *Preliminary Results*, with the following exceptions:

- In the *Preliminary Results*, to make a determination of value pursuant to the major input rule, the Department used the market price of middle–terephthalic acid ("MTA") as a proxy for the missing market price of qualified terephthalic acid ("QTA"). However, the record of this administrative review does not support a finding of interchangeability between these major inputs. Therefore, in accordance with sections 773(f)(3) and 776(a) of the Tariff Act of 1930, as amended ("the Act"), we have relied on facts available to make a determination of market value. For the final results, we added the supplier's profit rate, which we calculated from the supplier's fiscal year ending 2004 financial statements, to the supplier's COP to make a value determination for the missing market prices of these major inputs. We made this adjustment to both QTA and purified terephthalic acid because Huvis did not provide requested market prices for either input, though both are sourced from the same affiliated supplier. *See* Memorandum from Team, through Brandon Farlander, to the File, "*Final Results Calculation Memorandum for Huvis Corporation*," dated September 28, 2006 ("*Huvis Calculation Memorandum*"); *Decision Memorandum*, at Comment 1.
- In the computer program used to calculate NV, we have corrected a customer code for one of Huvis's home market customers. We have also corrected the computer code used to calculate Huvis's selling, general and administrative expense ratio and Huvis's financial expense ratio. *See Huvis Calculation Memorandum; Decision Memorandum*, at Comment 6.

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Huvis's comparison market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Final Results of the Review

We find that the following percentage margin exists for the period May 1, 2004, through April 30, 2005:

Exporter/manufacturer	Weighted–average margin percentage
Huvis Corporation	4.65

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

In its September 2, 2006, Sections B–D Questionnaire Response, Huvis submitted evidence demonstrating that it was the importer of record for certain of its POR sales. We examined the CBP entry documentation submitted by Huvis and tied it to the U.S. sales listing. We noted that Huvis was indeed the importer of record for certain sales. Therefore, for purposes of calculating the importer–specific assessment rates, we have treated Huvis as the importer of record for certain POR shipments. Pursuant to 19 CFR 351.212(b)(1), for all sales where Huvis is the importer of record, Huvis submitted the reported entered value of the U.S. sales and we have calculated an importer–specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding sales where Huvis was not the importer of record, we note that Huvis did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer–specific assessment rates, on a per kilogram basis, for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–

[1] On June 30, 2005, we initiated an administrative review of the antidumping duty order of PSF from Korea with respect to Daehan Synthetic Company, Ltd. On September 5, 2005, in response to the Department's antidumping duty questionnaire, we were notified by Daehan Synthetic Fiber, Co., Ltd. that Daehan Synthetic Fiber, Co., Ltd. had no shipments during the POR. *See* Memorandum from Yasmin Bordas to File, "*Questionnaire Response from Daehan Synthetic Fiber, Co., Ltd.*," dated March 15, 2006. The Department confirmed with U.S. Customs and Border Protection ("CBP") data that no shipments of subject merchandise were exported by either Daehan Synthetic Company, Ltd. or Daehan Synthetic Fiber, Co., Ltd. during the POR.

specific *ad valorem* ratios based on the estimated entered value.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by Huvis for which Huvis did not know the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

For Daehan, in the event any entries were made during the POR through intermediaries under the CBP case number for Daehan, the Department is instructing CBP to liquidate these entries and to assess antidumping duties at the all–others rate in effect at the time of entry, consistent with the May 6, 2003 clarification discussed above.

The Department will issue appropriate assessment instructions to CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted–average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the "all–others" rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

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 APO in accordance with 19 CFR 351.305, 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.

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

Dated: September 28, 2006.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

APPENDIX I

List of Comments in the Decision Memorandum

Comment 1: Major Inputs

Comment 2: Overseas Office Expenses

Comment 3: Inclusion of Extraordinary Losses in the G&A Calculation

Comment 4: Interest Earned On Retirement Insurance

Comment 5: Credit Period Recalculation

Comment 6: Computer Program Errors

[FR Doc. E6–16391 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–825

Sebacic Acid from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review

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

SUMMARY: On September 18, 2006, the United States Court of International Trade ("the Court") sustained the Department of Commerce's ("the Department") final remand redetermination on its entirety. *See Guangdong Chemicals Import & Export Corporation v. United States*, Ct. No. 05–00023, Slip Op. 06–142 (Ct. Int'l Trade September 18, 2006) ("*Guangdong II*"). This case arises out of the Department's final determination of *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 75303 (December 16, 2004) ("*Final Results*"). The final judgment in this case was not in harmony with the Department's *Final Results*.

EFFECTIVE DATE: October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, 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) 482–5047.

SUPPLEMENTARY INFORMATION:

Background

In the *Final Results*, the Department selected a surrogate value for sebacic acid in order to determine the portion of the factors of production attributable to sebacic acid and its co–product, capryl alcohol. *See* section 773(c) of the Tariff Act of 1930, as amended ("the Act"). To obtain a surrogate value for sebacic acid, the Department used information from Indian import statistics rather than the use of data maintained by the publication *Chemical Weekly* in its Chemicals Import and Export trade database index ("ChemImpEx") placed on the record and proposed by Guangdong Chemicals Import & Export Corporation ("Guangdong"). Additionally, the Department changed its methodology between the *Preliminary Results* (*see Sebacic Acid from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recision*,

69 FR 47409 (August 5, 2004) ("*Preliminary Results*")) and the *Final Results*, and applied a by–product offset to reflect Guangdong's sale of fatty acid and glycerine made in the production process.

Before the Court, Guangdong challenged the Department's selection of Indian import statistics as the surrogate to value sebacic acid, and its determination to apply the by–product offset after the application of the surrogate financial ratio to manufacturing costs in the *Final Results*. On January 25, 2006, the Court issued a remand in *Guangdong Chemicals Import & Export Corporation v. United States*, Ct. No. 05–00023 Slip Op. 06–13 (January 25, 2006). The Court stated that the Department did not justify its decision to abandon a more product–specific data source. *See id.* at 19. The Court specifically pointed out that a remand was necessary because the Department did not address the data Guangdong used to corroborate its ChemImpEx data, and the Department did not explain why the Department's use of the Indian import statistics was not aberrational given that the data was comprised of a basket category. *See id.* at 19 and 20. The Court concluded that the Department failed to present substantial evidence supporting its surrogate value for sebacic acid. *See id.* at 22.

Additionally, the Court granted the Department's request for a voluntary remand to give interested parties an opportunity to comment on the application of the by–product offset which was changed between the *Preliminary Results* and the *Final Results* without allowing parties the opportunity to comment on this change. *See id.* at 22.

In order to comply with the Court's remand order, the Department reviewed its choice of surrogate value for sebacic acid and made changes to the Indian import statistics to eliminate a value that the Department determined to be aberrational. Also, the Department provided additional explanation of its by–product methodology and provided interested parties an opportunity to comment on its methodology for the redetermination on remand. On May 3, 2006, the Department issued its *Final Redetermination Pursuant to Court Remand* ("*Final Redetermination*").

Guangdong continued to challenge the Department's determination in the *Final Redetermination*. On September 18, 2006, the Court found that the Department duly complied with the Court's remand order and sustained the *Final Redetermination*. *See Guangdong II*, Slip Op. 06–142 (September 18, 2006). The Court found that the Department's elimination of aberrational values constituted a reasonable step to compensate for some weaknesses in the Indian import statistics. *See id.* at 10. Therefore, the Court found that the Department's selection of surrogate value for sebacic acid is supported by substantial evidence. *See id.* at 12. Also, the Court found that the Department's analysis of the reliability of the Indian import statistics in view of the corroborating evidence submitted by Guangdong was reasonable. *See id.* at 15. Additionally, the Court upheld the Department's decision to account for separable costs associated with by–product sales by applying a by–product credit after the application of financial ratios to manufacturing costs. *See id.* at 21. Therefore, the Department's *Final Redetermination* was sustained in its entirety by the Court. Consequently, the antidumping duty rate for Guangdong will be 19.82 percent.

Timken Notice

In its decision in *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) ("*Timken*"), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act of 1930, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in Guangdong II on September 18, 2006, constitutes a final decision of that court that is not in harmony with the Department's final results of administrative review. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a final and conclusive court decision.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: September 28, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–16395 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–810]

Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review

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

SUMMARY: On November 1, 2005, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty ("CVD") order on certain corrosion-resistant carbon steel flat products from France, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested party, an adequate response from respondent interested parties, and respondent interested parties' arguments regarding post-investigation privatization of Usinor, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Therefore, the Department is not revoking this CVD order.

DATES: *Effective Date:* October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3692 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on certain corrosion-resistant carbon steel flat products from France pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews*, 70 FR 65884 (November 1, 2005).

On May 31, 2006, the Department published the preliminary results of the full sunset review of the instant order. *See Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006). Interested parties were invited to comment on our preliminary results. On July 11, 2006,

we received a case brief from Duferco Coating SA and Sorral SA (collectively, "Duferco Sorral"). We also received comments from the European Commission and from Sollac Atlantique, Sollac, Lorraine, Arcelor FCS Commercial, and Arcelor International America, LLC ("respondent interested parties"). On July 17, 2006, we received a rebuttal brief from United States Steel Corporation ("domestic interested party").

Scope of the Order

The merchandise covered by this order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 7210.31.000, 7210.39.0000, 7210.41.000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTSUS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issued raised in this review are addressed in the Issue and Decision Memorandum ("Decision Memorandum") from Stephen J. Claeys, Deputy Assistant Secretary for Import Adminstration, to James C. Leonard, III, Acting Assistant Secretary for Import Administration, dated September 27, 2006, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order on corrosion-resistant carbon steel flat products from France is likely to lead to continuation or recurrence of counteravailable subsidies at the following countervailing duty rate:

Manufacturer/exporter	Net subsidy margin (percent)
Country-Wide Rate	0.16

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 27, 2006.

James C. Leonard, III,

Acting Assistant Secretary for Import Administration.

[FR Doc. 06–8485 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

C–423–806

Cut-to-Length Carbon Steel Plate from Belgium: Final Results of Full Sunset Review

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

SUMMARY: On November 1, 2005, the Department of Commerce (the Department) initiated a sunset review of the countervailing duty (CVD) order on cut–to-length carbon steel plate (CTL plate) from Belgium, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and adequate responses from respondent interested parties, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). On July 21, 2006, the Department published the preliminary results in this review and invited interested parties to comment on those results. *See Preliminary Results of Full Sunset Review: Cut–to-Length Carbon Steel Plate From Belgium*, 71 FR 41424 (*Preliminary Results*). As a result of our analysis, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated the second sunset review of the CVD order on CTL plate from Belgium, pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 65884 (November 1, 2005). On December 21, 2005, the Department determined that the participation of the respondent interested parties was adequate, and that it was appropriate to conduct a full sunset review. *See* Memorandum to Steven J. Claeys, Deputy Assistant Secretary, Import Administration, Re: *Adequacy Determination; Sunset Review of the Countervailing Duty Order on Cut–to-Length Carbon Steel Plate from Belgium* dated December 21, 2005, and on file in the Central Records Unit, Room B–099 of the Department of Commerce building (CRU).

On February 10, 2006, the Department extended the time limit for the preliminary and final results of the sunset review of the CVD order on CTL plate from Belgium. *See Cut–to-Length Carbon Steel Plate from Belgium, Sweden, and the United Kingdom; Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Reviews of Countervailing Duty Orders*, 71 FR 7017. On July 21, 2006, the Department published its *Preliminary Results of Full Sunset Review: Cut–to-Length Carbon Steel Plate from Belgium*, 71 FR 41424 (*Preliminary Results*). In our *Preliminary Results*, we found that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies on the subject merchandise.

Interested parties were invited to comment on our *Preliminary Results*. On August 4, 2006, we received a timely case brief from the Government of Belgium (GOB). On August 7, 2006, we received timely case briefs from Duferco Clabecq S.A. (Duferco), which purchased Forges de Clabecq S.A.(Clabecq), and Arcelor S.A. (Arcelor), claiming to be the successor–in-interest to both Fabrique de Fer de Charleroi (Fafer)[1] and Cockerill Sambre (Cockerill).[2] We received no comments from domestic interested parties.

Scope Of The Order

The product subject to this CVD order includes hot–rolled carbon steel universal mill plates (i.e., flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the United States Harmonized Tariff Schedule ("HTS") under item numbers: 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.5000. Included in this CVD order are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")--for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Court of Appeals for the Federal Circuit found, in *Duferco Steel, Inc. v. United States*, 296 F.3d 1087 (July 12, 2002), that imported floor plate is excluded from this CVD order on steel plate.

Analysis Of Comments Received

All issues raised in this review are addressed in the *Issues and Decision Memorandum for Final Results of Full Sunset Review of the Countervailing Duty Order on Cut–to-length Carbon Steel Plate from Belgium* from Steven J. Claeys, Deputy Assistant Secretary for Import Administration, to James C. Leonard III, Acting Assistant Secretary for Import Administration (*Final Decision Memorandum*), dated concurrently with this notice and which is hereby adopted by this notice. The issues discussed in the *Final Decision Memorandum* include the likelihood of continuation or recurrence a countervailable subsidy; the net countervailable subsidy likely to prevail; privatization of Cockerill; and, nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the CRU. In addition, a complete version of the *Final Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper and electronic versions of the *Final Decision Memorandum* are identical in content.

Final Results Of Review

The Department determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. As discussed more fully in the *Final Decision Memorandum*, we find that certain countervailable subsidies continue to be in existence. Accordingly, we find the net countervailable subsidy likely to prevail if the order were revoked to be:

Producers/exporters	Net Countervailable Subsidy (percent)
Cockerill	2.82
Fafer	0.56
All others (including Clabecq)	0.50

International Trade Commission (ITC) Notification

In accordance with section 752(b)(3) of the Act, we will notify the ITC of the final results of this full sunset review.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to

[1] In other proceedings under this order, Fafer has at times been referred to as "Fabfer."

[2] Although Duferco reported that it purchased Clabecq, and Arcelor claims to be successor-in-interest to the other two original respondent companies, the Department has not made a determination in the past that Duferco and Arcelor are the successors-in-interest to the respective respondent companies and is not making such a determination in this sunset review. However, we have considered in this sunset review the historical information provided with respect to Duferco and Arcelor for purposes of our privatization and change-in-ownership analyses. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: *Sunset Review of Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from Belgium; Analysis of Changes in Ownership*, dated July 14, 2006, incorporated in the *Preliminary Results* and on file in the CRU.

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.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: September 27, 2006.

James C. Leonard III,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–16390 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–804]

Final Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate From Sweden

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

SUMMARY: On July 19, 2006, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the full sunset review of the countervailing duty (CVD) order on cut-to-length carbon steel plate from Sweden, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of our analysis, the Department preliminarily found that revocation of the CVD order would be likely to lead to the continuation or recurrence of a countervailable subsidy.

We provided interested parties an opportunity to comment on our preliminary results. However, we received no comments from interested parties. As a result, the final results remain the same as the preliminary results of this review.

EFFECTIVE DATE: October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION: On July 19, 2006, the Department published in the **Federal Register** the preliminary results of the full sunset review of the CVD order on cut-to-length carbon steel plate from Sweden. *See Preliminary Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate From Sweden*, 71 FR 40992 (July 19, 2006) (*Preliminary Results*). No interested parties filed case briefs in response to the Department's invitation to comment on the *Preliminary Results*.

Scope of the Order

The merchandise subject to the CVD order is certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters, and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the United States Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Final Results of Review

As stated in the *Preliminary Results*, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. In addition, we preliminarily determined that the rate likely to prevail is *de minimis*. As we did not receive any comments from any interested parties regarding the *Preliminary Results*, we have no reason to reconsider our preliminary decision.

International Trade Commission (ITC) Notification

In accordance with section 752(b)(3) of the Act, we will notify the ITC of the final results of this full sunset review.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely notification of the return or 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 that is subject to sanction.

We are issuing and publishing these final results and this notice of sunset review in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 27, 2006.

James C. Leonard, III,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–16392 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

C–412–815

Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Full Sunset Review

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

SUMMARY: On November 1, 2005, the Department of Commerce (Department) initiated a sunset review of the countervailing duty (CVD) order on cut-to-length carbon steel plate (CTL plate) from the United Kingdom, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and an adequate response from respondent interested parties, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). On July 19, 2006, the Department published the preliminary results of this review and invited interested parties to comment on those results. *See Preliminary Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate From the United*

Kingdom, 71 FR 40993 (*Preliminary Results*). Based on our analysis of the comments and the record, the Department finds that revocation of the CVD order on CTL plate from the United Kingdom would not be likely to lead to continuation or recurrence of a countervailable subsidy. Therefore, the Department is revoking this CVD order in accordance with section 751(c) of the Act.

EFFECTIVE DATE: October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Kimberley Hunt or Mark Hoadley, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1272 or (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on cut–to-length carbon steel plate from the United Kingdom pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 65884 (November 1, 2005) (*Notice of Initiation*).

On December 21, 2005, the Department determined that the participation of the respondent interested parties was adequate, and that it was appropriate to conduct a full sunset review. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: *Adequacy Determination; Sunset Review of the Countervailing Duty Order on Cut–to-Length Carbon Steel Plate from the United Kingdom*, on file in CRU. On February 10, 2006, the Department extended the time limit for the preliminary and final results of the sunset review of the CVD order on CTL plate from the United Kingdom (UK) to no later than July 14 and September 27, 2006, respectively. *See Cut–to-Length Carbon Steel Plate from Belgium, Sweden, and the United Kingdom; Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Reviews of Countervailing Duty Orders*, 71 FR 7017 (February 10, 2006).

On July 19, 2006, the Department published the preliminary results of the full sunset review, finding that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy and requested case and rebuttal briefs from interested parties. *See Preliminary Results.*[1] Corus Group plc (Corus)[2] requested, and the Department granted, an extension of time for the submission of case briefs, hearing requests and rebuttal briefs. *See* Memorandum to All Interested Parties from Barbara E. Tillman, Office Director, Office of AD/CVD Operations 6, Re: *Sunset Review of the Countervailing Duty Orders on Cut–to-length carbon steel plate from the United Kingdom; Extension of time to file case and rebuttal briefs* dated July 31, 2006 and on file in CRU.

On August 4, 2006, the European Union Delegation of the European Commission (EC) submitted its brief on the Department's *Preliminary Results*. The Department noted that the case reference was incorrect and asked the EC to resubmit its brief with the proper case reference which it did on August 7, 2006. Additionally on August 7, 2006, the Government of the United Kingdom (UKG) and Corus submitted their briefs. These briefs were rebutted by Mittal Steel USA ISG Inc. (Mittal), Nucor Corporation, IPSCO Steel Inc., and Oregon Steel Mills (collectively, petitioners) on August 14, 2006. Niagara LaSalle (UK) Limited (Niagara)[3] did not submit comments on the *Preliminary Results*.

On August 24, 2006, representatives from the EC and UKG met with representatives from the Department to discuss petitioners' rebuttal brief. A memorandum recording this meeting was placed on the file August 25, 2006. See Memorandum to The File, Re: *August 24, 2006 Meeting with the Government of the United Kingdom and the European Commission*, dated August 30, 2006.

On September 5 and 7, 2006, pursuant to section 351.104(a)(2) of the Department's regulations, the Department rejected the briefs of the UKG, the EC and Corus because they contained new factual information submitted after the time limit for submitting new factual information had expired. The Department removed the submissions from the record, and requested each party to refile its briefs without the new factual information. See Letters from Barbara E. Tillman, Director, Office of AD/CVD Enforcement 6 to James Hughes, First Secretary of Trade for the Embassy of the United Kingdom dated September 5, 2006; to Nikolaos Zaimis, Counselor - Head of Trade Section for the Delegation of the European Commission dated September 7, 2006; and to Gregory McCue, Esq., Representative of Corus Group plc. dated September 7, 2006, on file in CRU.

On September 8 and September 13, 2006, the EC and the UKG submitted letters to the Department declining the Department's invitation to resubmit their briefs. Because neither the EC's nor the UKG's August 7, 2006 submissions are on the record, pursuant to 19 CFR 351.104, we have not addressed any comments raised in those briefs in making our determination in these final results; we have, however, addressed the arguments made in their September 8 and 13, 2006 letters. For a full discussion of these arguments, *see* the Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to James C. Leonard III, Acting Assistant Secretary for Import Administration, dated concurrently with this notice (*Final Decision Memorandum*); *see also Memorandum to the File Re: Rejection of Submissions from the United Kingdom Government, the European Union Delegation of the European Commission and Corus Group plc from the Record of the Final Results of the Full Sunset Review of the Countervailing Duty Order on Cut–to-Length Carbon Steel Plate from the United Kingdom*, dated September 27, 2006. Corus submitted an amended brief on September 11, 2006.

Scope Of The Order

The products covered by this countervailing duty order are certain cut–to-length carbon steel plates from the United Kingdom, including hot–rolled carbon steel universal mill plates (i.e., flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither

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[1] In the *Preliminary Results*, with respect to the change in ownership of Glynwed Steel Limited (Glynwed), the Department concluded that the sale of Glynwed was an arm's-length transaction negotiated between unrelated private parties. Thus, the Department concluded that, because it was a private-to-private sale at arm's length and, absent evidence to the contrary, the transaction was for fair market value and the countervailable benefits attributed to Glynwed in the original investigation were extinguished by the change in ownership. *See* "Final Decision in the Second 129 Proceeding – First Sunset review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from the United Kingdom" dated May 26, 2006 (*Second 129*) at 15.

[2] Corus/BS plc relationship: See footnote 2.

[3] Glynwed Steel Limited (Glynwed)/Niagara relationship: *See* footnote 1.

clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the United States Harmonized Tariff Schedule (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") – for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive. As a result of a changed circumstances review[4], the order excludes certain cut–to-length carbon steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2.

Analysis Of Comments Received

All issues raised in this review are addressed in the *Final Decision Memorandum*, dated concurrently with this notice and which is hereby adopted by this notice. The issues discussed in the *Final Decision Memorandum* include the rejection of untimely submitted new factual information, the likelihood of continuation or recurrence a countervailable subsidy and the net countervailable subsidy likely to prevail. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in CRU. In addition, a complete version of the *Final Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the *Final Decision Memorandum* are identical in content.

[4] *See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany and the United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part*, 64 FR 46343 (August 25, 1999)

Final Results Of Review

The Department determines that revocation of the CVD order would not be likely to lead to continuation or recurrence of a countervailable subsidy. As we recognized in the *Preliminary Results*, three of the six programs previously found to be countervailable have been terminated. For one of the remaining programs, the UK Regional Development Grants (RDG) program, the Department now determines that there is no likelihood that subsidization will continue or recur. In light of the change in our likelihood determination for the RDG program, we have re–examined our preliminary findings for the European Regional Development Fund (ERDF) Aid and the European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates programs, the only remaining subsidies that provide a basis for our likelihood determination. As we noted in the *Preliminary Results*, the combined benefits from those programs have never been above zero. Therefore, we find that there would be no likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked. *See e.g., Final Results of Full Sunset Review: Brass Sheet and Strip from France*, 71 FR 10651 (March 2, 2006), and accompanying *Issues and Decisions Memorandum*. Our full analysis is included in the *Final Decision Memorandum*.

As a result, we are revoking this order effective December 15, 2005, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of the CVD order on CTL plate from the UK. *See Notice of Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 65 FR 78469 (December 15, 2000). We will notify the International Trade Commission of these results. Furthermore, within 15 days of the publication of this notice, we will instruct U.S. Customs and Border Protection to terminate suspension of liquidation, effective December 15, 2005.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or 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.

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 27, 2006.

James C. Leonard III,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–16393 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on New York Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce, and the Environmental Protection Agency.

ACTION: Notice of intent to approve the New York Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the New York Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the New York coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the New York coastal nonpoint program on November 18, 1997. NOAA and EPA have drafted approval decisions describing how New York has satisfied the conditions placed on its program

and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the New York coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://coastalmanagement.noaa.gov/czm/6217/findings.html* or may be obtained upon request from: Helen Bass, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x175, e-mail *Helen.Bass@noaa.gov*.

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by November 3, 2006.

ADDRESSES: Comments should be made to: John King, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *John.King@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: John Kuriawa, Coastal Programs Division, (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x202, e-mail *John.Kuriawa@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: September 25, 2006.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 06–8468 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Conservation member, Research alternate, Business member and Business alternate, Public-at-large member, Non-consumptive recreation member and Non-consumptive recreation alternate. Applicants are chosen based upon: Their particular expertise and experience in relation to the seat for which they are applying, community and professional affiliations, views regarding the protection and management of maine resources, and the length of residence in the communities located near the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by October 26, 2006.

ADDRESSES: Application kits may be obtained from Dani Lipski, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109–2315. Completed applications should be sent to the same address. Application materials are also available at: *http://www.channelislands.noaa.gov/sac/news.html*

FOR FURTHER INFORMATION CONTACT: Michael Murray, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109–2315, 805–966–7107 extension 464, *michael.murray@noaa.gov*.

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Superintendent. The Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving Sanctuary use of resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 26, 2006.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 06–8469 Filed 10–3–06; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.1), announcement is made of the following committee meeting.

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: October 26, 2006 and October 27, 2006.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, Pennsylvania 17013.

Time of Meeting: 8:30 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant and staff and facility; table and examine online College issues; assess resident and distance education programs, self-study techniques, assemble a working group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Henry M. St-Pierre, Director of Joint

Education, Department of Academic Affairs, U.S. Army War College, 122 Forbes Avenue, ATTN: DAA, Carlisle, PA 17013 or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, make a presentation, or file statements with the Committee after receiving advance approval for participation.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–8475 Filed 10–3–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0369]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Rights in Technical Data and Computer Software

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through February 28, 2007. DoD proposes that OMB extend its approval for use for 3 additional years.

DATES: DoD will consider all comments received by December 4, 2006.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0369, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0369 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, at (703) 602–0328. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0369.

Needs and Uses: DFARS Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Number of Respondents: 54,925.

Responses Per Respondent: 9.6.

Annual Responses: 526,797.

Average Burden per Response: 2.9 hours.

Annual Response Burden Hours: 1,535,894 hours.

Annual Recordkeeping Burden Hours: 97,375 hours.

Total Annual Burden Hours: 1,633,269 hours.

Frequency: On occasion.

Summary of Information Collection

DoD uses the following DFARS provisions and clauses in solicitations and contracts to require offerors and contractors to identify and mark data or software requiring protection from unauthorized release or disclosure in accordance with 10 U.S.C. 2320:

252.227–7013, Rights in Technical Data-Noncommercial Items.

252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions.

252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

In accordance with 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items, requires the contractor to identify and mark data or software that it provides with limited rights.

In accordance with 10 U.S.C. 2321(b), contractors and subcontractors at any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The following DFARS clauses require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions:

252.227–7019, Validation of Asserted Restrictions—Computer Software.

252.227–7037, Validation of Restrictive Markings on Technical Data.

In accordance with 10 U.S.C. 2320, DoD must protect the rights of contractors that have developed items, components, or processes at private expense. Therefore, the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government—Furnished Information Marked with Restrictive Legends, requires a contractor or subcontractor to submit a use and non-disclosure agreement when it obtains data from the Government to which the Government has only limited rights.

The provision at DFARS 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, requires an offeror to identify any technical data or computer software that it previously delivered, or will deliver, under any Government contract. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E6–16420 Filed 10–3–06; 8:45 am]

BILLING CODE 6820–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Supplemental Environmental Impact Statement on Rock Mining in Wetlands in the Lake Belt Region of Miami-Dade County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army corps of Engineers (Corps) Jacksonville District intends to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate potential impacts of further rock mining within wetlands in western Miami-date county, FL. The original EIS, The Rock Mining-Freshwater Lakebelt Plan Programmatic Environmental Impact Statement, issued in May 2000 focused on the potential impacts of a 50-year mining plan within the Lake Belt area. After evaluating the EIS, the Corps issued a Record of Decision and permits that allowed mining within a smaller, 10-year plan in April 2002. The Corps decision was challenged in United States District Court and the Court's Order on Motions for Summary Judgement was issued on March 22, 2006 as part of Case No. 03–23427–CIV–HOEVELER, United States District Court Southern District of Florida. The decision instructed the Corps to engage in additional analyses of rock mining in the Lake Belt region. Accordingly, the Corps is preparing this SEIS.

DATES: The Corps plans to hold a public scoping meeting on October 19, 2006 at 7 p.m. EST.

ADDRESSES: The meeting will be held at the Miami Dade Fire Rescue Headquarters, 9300 NW 41st Street, Doral, FL 33178. (786) 331–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Leah Oberlin, (561) 472–3506.

SUPPLEMENTARY INFORMATION: a. *Project background and Authorization.* The Corps examined the potential impacts of rock mining activities with a 50-year life under the Miami-Dade County Lakebelt Plan (Lakebelt Plan), as accepted by the Florida Legislature in Section 373.4149, Florida Statutes (F.S.). The Corps participated in the committee of agency and industry representatives created in 1992 by the Florida Legislature, prepared an EIS, and participated in a technical review and advisory group formed by the Working Group for the Restoration of the South Florida Ecosystem. While the original EIS reviewed a 50-year plan for rock mining, the Corps issued Department of the Army (DA) authorization to ten rock mining companies on April 11, 2002 authorizing 10 year of mining activities over a 5,712 acre area. Mining under the 10-year permits has been underway for four years.

b. *Need or Purpose.* The purpose of the proposed action is to continue to provide high-quality construction grade limestone to the construction industry in Florida. The Corps recognizes that there is a public and private need for this product. The purpose of the proposed SEIS is to evaluate the environmental effects of alternatives to meet these requirements while protecting the aquatic environment.

c. *Prior EAs, EISs.* In May 2000, the Corps produced a Final Programmatic EIS for rock mining in the Lake Belt Region considering a 50-year mining plan. This SEIS will update and supplement that EIS and will also evaluate alternatives for present and possible future mining operations.

d. *Alternatives.* An evaluation of alternatives, including a "No Action" alternative and rock mining in other areas both inside and outside of Miami-Dade County and/or Florida will be done. The SEIS will analyze reasonable alternatives to obtaining construction grade limestone and other limestone products to meet the identified purpose and need. Alternatives will be determined through scoping, but are expected to vary according to location, timing, and breadth of mining, in addition to a "no action" alternative.

e. *Issues.* In addition to updating and supplementing the information from the 2000 EIS, the following issues have been identified for analysis in the SEIS. This list is preliminary and is intended to facilitate public comment on the scope of the SEIS. The SEIS will consider the effects on Federally listed threatened and endangered species, essential fish habitats, health and safety, conservation, economics, aesthetics, general environmental concerns, wetlands (and other aquatic resources), historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations and property ownership, and, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement, and interagency coordination. At the present time, our primary environmental focus will be on endangered species (including but not limited to possible effects on the wood stock and the Eastern indigo snake), the loss of wetland functions and value, mitigation (including but not limited to the available of land for acquisition in Pennsucco and other mitigation options), drinking water well field protection (including but not limited to possible contaminants including benzene, cryptosporidum, and giardia), groundwater seepage to the east (including but not limited to possible impacts to resources of Everglades National Park), and surface water quality.

We expect to better define the issues of concern and define the methods that will be used to evaluate those issues through the scoping process.

f. *Scoping Process.* CEQ regulations (40 CFR 1501.7) require an early and open process for determining the scope of an EIS and for identifying significant issues related to the proposed action. The public will be involved in the scoping and evaluation process through advertisements, notices, and other means. At a minimum, all parties who have expressed interest in the Lake Belt Rock Mining Permits will be given the opportunity to participate in this process. Federal, state and local agencies, and other interested groups will also be involved. Meetings to address discrete issues or parts or functions of the study area may be called. All parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scope of the SEIS.

A public scoping meeting is scheduled for (see **DATES** and **ADDRESSES**). The Corps will provide additional notification of the meeting time and location through newspaper advertisements and other means. Following a short presentation on the planned SEIS, verbal and written comments on the scope of the SEIS will

be accepted. A transcript of verbal comments will be generated to ensure accuracy. A Spanish language translator will be available. To submit comments on the scope of the Lake Belt SEIS or to request copies of materials related to this effort as they become available to the public, contact: Ms. Leah Oberlin, U.S. Army Corps of Engineers, Regulatory Division, Palm Beach Gardens Regulatory Office, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL, 33410, by e-mail at *Leah.A.Oberlin@saj02.usace.army.mil,* or by telephone at (561) 472–3506. Comments or requests for information can also be submitted on the Lake Belt SEIS Web site at *http://www.lakebeltseis.com.* The Corps will consider all comments for the scope of the SEIS received by November 17, 2006.

g. *Public Involvement.* The Corps invites Federal agencies, American Indian Tribal Nations, state and local governments, and other interested private organizations and parties to attend the public scooping meeting and to comment on the scope of the planned Lake Belt SEIS.

h. *Coordination.* The proposed action is being coordinated with a number of Federal, state, regional, and local agencies including but not limited to the following: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Enviormental Protection Agncy, Florida Department of Environmental Protection, State Historic Preservation Officer, South Florida Water Management District, Miami-Dade County, and Everglades National Park, and other agencies as identified in scoping, public involvement, and agency coordination.

i. *Other Environmental Review and Consultation.* The proposed action will involve an evaluation for compliance with all applicable guidelines pursuant to section 404(b) of the Clean Water Act. This review will involve a detailed evaluation of alternatives to the ongoing rock mining in the Lake Belt area, which is not a water dependent activity.

j. *Agency Role.* The Corps will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives. Although the Corps does not plan to invite any Federal agencies to be cooperating agencies, we expect to receive input and critical information from the U.S. Enviromental Protection Agency, the U.S. Fish and Wildlife Service and other federal, state, and local agencies.

k. *Draft Lake Belt SEIS Preparation.* It is estimated that the SEIS will be available to the public on or about May 2007. At least one additional public meeting will be held at that time, during which the public will be provided the opportunity to comment on the Draft SEIS before its becomes final.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–8476 Filed 10–3–06; 8:45 am]

BILLING CODE 3710–AJ–M

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 4, 2006.

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: September 28, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Carl D. Perkins Career and Technical Education Improvement Act of 2006 (Pub. L. 109–270) State Plan Guide.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 5,112.

Abstract: Federal vocational education legislation has been reauthorized. The Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV), 20 U.S.C. 2301 *et seq.* as amended by Pub. L. 109–270, was signed into law on August 12, 2006. The purpose of this request is to reinstate and update the information collection package 1830–0029 (The Carl D Perkins Vocational and Technical Education Act of 1998; Pub. L 105–332—State Plan) to include: instructions regarding contents of a one-year transition plan or six-year State plan; new State plan narrative requirements from the new Act; information States must provide regarding the consolidation of Title II funds under Title I; budget information; accountability information; and a cover page that must be submitted with the State plan.

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 3212. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. 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. E6–16362 Filed 10–3–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–444–001]

Egan Hub Storage, LLC; Notice of Compliance Filing

September 27, 2006.

Take notice that on September 25, 2006, Egan Hub Storage, LLC (Egan Hub) submitted a compliance filing pursuant to Egan Hub Storage, LLC, 116 FERC ¶ 61,174 (2006), issued on August 24, 2006.

Egan Hub states that copies of its filing have been served upon all parties on the Commission's official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16346 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–609–000]

El Paso Natural Gas Company; Notice of Tariff Filing

September 27, 2006.

Take notice that on September 25, 2006, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 371 and Second Revised Sheet No. 372, to become effective October 26, 2006.

EPNG states that the tariff sheets are being filed to update the discount provisions to incorporate the most up-to-date list of permissible generic discounts.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16343 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–496–001]

Rockies Express Pipeline LLC; Notice of Tariff Filing

September 27, 2006.

Take notice that on September 25, 2006, Rockies Express Pipeline LLC (REX) tendered for filing an original and five copies of the following tariff sheets to become part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 2006:

Substitute First Revised Sheet No. 20
Substitute First Revised Sheet No. 20A
Substitute First Revised Sheet No. 20B

REX states that these tariff sheets are being submitted to remove the ACA unit charge from REX's rate sheets.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16347 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 27, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–165–000.

Applicants: Pinnacle West Capital Corporation; Pinnacle West Marketing & Trading.

Description: Pinnacle West Capital Corp et al submit a joint application for approval of corporate reorganization under Section 203 of the FPA.

Filed Date: September 21, 2006.

Accession Number: 20060926–0263.

Comment Date: 5 p.m. Eastern Time on Monday, October 23, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–1293–008; ER06–398–001; ER06–399–001; ER04–268–004; ER98–4159–007.

Applicants: Monmouth Energy, Inc.; Duquesne Keystone LLC; Duquesne Conemaugh LLC; Duquesne Power, L.P.; Duquesne Light Company.

Description: Duquesne Keystone LLC et al submit their notice of change in status related to the Duquesne Companies' acquisition of approx 108 MWs of generation.

Filed Date: September 22, 2006.

Accession Number: 20060926–0199.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Docket Numbers: ER03–715–004.

Applicants: Marina Energy, LLC.

Description: Marina Energy, LLC submits its triennial updated market power analysis pursuant to the Commission's Order issued June 17, 2006.

Filed Date: September 21, 2006.

Accession Number: 20060922–0063.

Comment Date: 5 p.m. Eastern Time on Thursday, October 12, 2006.

Docket Numbers: ER03–768–004.

Applicants: Susquehanna Energy Products LLC.

Description: Susquehanna Energy Products LLC submits its updated market power analysis in compliance with FERC's Order issued June 16, 2006, *et al.*

Filed Date: September 20, 2006.

Accession Number: 20060926–0259.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 11, 2006.

Docket Numbers: ER06–427–005.

Applicants: Mystic Development, LLC.

Description: Mystic Development, LLC submits a Second Revised Sheet 7 to FERC Electric Tariff, Original Volume No. 2 pursuant to the Commission's order issued August 23, 2006.

Filed Date: September 22, 2006.

Accession Number: 20060926–0216.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Docket Numbers: ER06–559–001.

Applicants: Entergy Louisiana, LLC.

Description: Entergy Louisiana, LLC submits a Notice of Termination canceling several rate schedules that are no longer in use pursuant to the Commission's March 9, 2006 order.

Filed Date: September 22, 2006.

Accession Number: 20060927–0074.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Docket Numbers: ER06–1314–001.

Applicants: E.ON U.S., LLC.

Description: E.ON U.S. LLC submits its compliance electric Refund Report pursuant to the Commission's order issued August 24, 2006.

Filed Date: September 25, 2006.

Accession Number: 20060925–5005.

Comment Date: 5 p.m. Eastern Time on Monday, October 16, 2006.

Docket Numbers: ER06–1489–001.

Applicants: S.A.C. Energy Investments, L.P.

Description: SAC Energy Investments LP submits a non-material amendment to its application for market-based rate authority which was filed on September 13, 2006.

Filed Date: September 25, 2006.

Accession Number: 20060926–0198.

Comment Date: 5 p.m. Eastern Time on Monday, October 16, 2006.

Docket Numbers: ER06–1511–000.

Applicants: R&R Energy, Inc.

Description: R&R Energy, Inc submits a petition for acceptance of its initial rate schedule, waivers and blanket authority.

Filed Date: September 15, 2006.

Accession Number: 20060926–0261.

Comment Date: 5 p.m. Eastern Time on Friday, October 6, 2006.

Docket Numbers: ER06–1512–000.

Applicants: Verso Androscoggin LLC.

Description: Verso Androscoggin, LLC submits a Notice of Succession and a revised market-based rate tariff.

Filed Date: September 21, 2006.

Accession Number: 20060926–0258.

Comment Date: 5 p.m. Eastern Time on Thursday, October 12, 2006.

Docket Numbers: ER06–1513–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits a non-conforming Market Participation Service Agreement with 330 Fund I, LP.

Filed Date: September 21, 2006.

Accession Number: 20060926–0262.

Comment Date: 5 p.m. Eastern Time on Thursday, October 12, 2006.

Docket Numbers: ER06–1514–000.

Applicants: Rochester Gas and Electric Corporation.

Description: Rochester Gas and Electric Corp submits its Third Amendment to the Interconnection Agreement with RE Ginna Nuclear Power Plant, LLC.

Filed Date: September 22, 2006.

Accession Number: 20060926–0218.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Docket Numbers: ER06–1515–000.

Applicants: TXU Portfolio Management Company LP.

Description: TXU Portfolio Management Company, LP submits its application for amendment to its market-based rate tariff.

Filed Date: September 22, 2006.

Accession Number: 20060926–0217.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06–107–000.

Applicants: PPL Corporation.

Description: PPL Corporation submits a Petition for Waiver pursuant to section 18 CFR 366.4(c)(1) of the Commission's Regulations.

Filed Date: September 22, 2006.

Accession Number: 20060922–5050.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Docket Numbers: PH06–108–000.

Applicants: Sempra Energy.

Description: Sempra Energy submits a Notification of Waiver pursuant to section 18 CFR 366.4(c)(1) of the Commission's Regulations.

Filed Date: September 22, 2006.

Accession Number: 20060922–5063.

Comment Date: 5 p.m. Eastern Time on Friday, October 13, 2006.

Docket Numbers: PH06–109–000; PH06–110–000; PH06–111–000; PH06–112–000; PH06–113–000; PH06–114–000.

Applicants: Plainfield Direct Institutional Offshore Feeder Fund Limited; Plainfield Direct Offshore Feeder Fund Limited; Plainfield Direct Onshore Feeder Fund LP; Plainfield Special Situations Institutional Offshore Feeder Fund Limited; Plainfield Special Situations Offshore Feeder Fund Limited; Plainfield Special Situations Onshore Feeder Fund LP.

Description: Plainfield Direct, et al submit Waiver Notifications pursuant to sections 18 CFR 366.3(c) and 366.4(c) of the Commission's Regulations.

Filed Date: September 25, 2006.

Accession Number: 20060925–5039.

Comment Date: 5 p.m. Eastern Time on Monday, October 16, 2006.

Docket Numbers: PH06–115–000.

Applicants: D. E. Shaw & Co., II, Inc.

Description: D. E. Shaw & Co., II, Inc submits its Notice of Waiver pursuant to sections 18 CFR 366.3(c) and 366.4(c)(1) of the Commission's regulations.

Filed Date: September 25, 2006.

Accession Number: 20060925–5042.

Comment Date: 5 p.m. Eastern Time on Monday, October 16, 2006.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16341 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ID–3780–001, et al.]

Johnson, Lisa D., et al.; Electric Rate and Corporate Filings

September 28, 2006.

The following filings have been made with the Commission. The filings are linked in ascending order within each classification.

1. Johnson, Lisa D.

[Docket No. ID–3780–001]

Take notice that on September 26, 2006, Lisa D. Johnson filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

2. Widdowson, Carl R.

[Docket No. ID–5061–000]

Take notice that on September 26, 2006, Carl R. Widdowson filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

3. Henry, Bruce A.

[Docket No. ID–5062–000]

Take notice that on September 26, 2006, Bruce A. Henry filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

4. Feuerberg, Stanley C.

[Docket No. ID–5063–000]

Take notice that on September 26, 2006, Stanley C. Feuerberg filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

5. Farmer, Kent D.

[Docket No. ID–5064–000]

Take notice that on September 26, 2006, Kent D. Farmer filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

6. Chappell, Glenn F.

[Docket No. ID–5065–000]

Take notice that on September 26, 2006, Glenn F. Chappell filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

7. White, Gregory W.

[Docket No. ID–5066–000]

Take notice that on September 26, 2006, Gregory W. White filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

8. Tankard, Philip B.

[Docket No. ID–5067–000]

Take notice that on September 26, 2006, Philip B. Tankard filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

9. Rummel, Myron D.

[Docket No. ID–5068–000]

Take notice that on September 26, 2006, Myron D. Rummel filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

10. Longshore, M. Larry

[Docket No. ID–5069–000]

Take notice that on September 26, 2006, M. Larry Longshore filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

11. King, Bruce M.

[Docket No. ID–5070–000]

Take notice that on September 26, 2006, Bruce M. King filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

12. Kees, Robert L.

[Docket No. ID–5071–000]

Take notice that on September 26, 2006, Robert L. Kees filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

13. Jones, David J.

[Docket No. ID–5072–000]

Take notice that on September 26, 2006, David J. Jones filed an application for authority to hold interlocking directorate positions pursuant to section 305(b) of the Federal Power Act, Part 45.8 of the Commission's Rules of Practice and Procedure and Order No. 664.

Comment Date: 5 p.m. Eastern Time on October 26, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16342 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 27, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12738–000.

c. *Date Filed:* September 18, 2006.

d. *Applicant:* Orient Point Tidal Energy Inc.

e. *Name of Project:* Orient Point Tidal Energy Project.

f. *Location:* The proposed tidal project would be located on Long Island Sound in Suffolk County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Kevin G. Lynch, Orient Point Tidal Energy Inc., 1037 Ashe Street, Davidsonville, MD 21035, (410) 956–6599.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–4126.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12738–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12732–000, Date Filed: August 29, 2006, Date Issued: September 19, 2006, Due Date: November 18, 2006.

l. *Description of Project:* The proposed Tidal project would consist of: (1) A

proposed field of axial free flow turbines having a total installed capacity of up to 124 megawatts, (2) proposed transmission line, and (3) appurtenant facilities. The project would have an annual generation of 460 gigawatt-hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

u. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16344 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

September 27, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12739–000.

c. *Date Filed:* September 18, 2006.

d. *Applicant:* Fishers Island Tidal Energy Inc.

e. *Name of Project:* Fisher Island Tidal Energy Project.

f. *Location:* The proposed tidal project would be located on Long Island Sound in Suffolk County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Kevin G. Lynch, Fishers Island Tidal Energy Inc., 1037 Ashe Street, Davidsonville, MD 21035, (410) 956–6599.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–4126.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Please include the project number (P–12739–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12732–000, Date Filed: August 29, 2006, Date Issued: September 19, 2006, Due Date: November 18, 2006.

l. *Description of Project:* The proposed Tidal project would consist of: (1) a proposed field of axial free flow turbines having a total installed capacity ranging from 93 to 410 megawatts, (2) proposed transmission line; and (3) appurtenant facilities. The project would have an annual generation of 345 to 1540 gigawatt-hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings

u. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16345 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 27, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12718–000.

c. *Date filed:* July 20, 2006.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Wards Island Tidal Power Project.

f. *Location:* The project would be located in the East River, off the south point of Wards Island in Hell's Gate in New York County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12528, phone: (845)–691–4008.

i. *FERC Contact:* Chris Yeakel, (202) 502–8132.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would be a hybrid project using solar, wind and tidal power generators. The proposed project in conjunction with two 50 kilowatt Bergey S–50 wind turbines, would consist of: (1) A bridge approximately 60 feet long leading to, (2) a barge-mounted power module equipped with, (3) integrated solar electric panels with a capacity of 5 to 20 kilowatts, (4) eight integrated 12 kilowatt vertical-axis helical turbines 1 meter in diameter, and (6) interconnection transmission lines. The tidal component of the project is estimated to have a minimum annual generation of 420.5 megawatt-hours per year. Power generated by this project would contribute to the micro-loop utility grid to be developed on Wards Island for servicing the power needs of the public recreation and park facilities located there.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST","COMPETING APPLICATION" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16348 Filed 10–3–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8227–3]

National Drinking Water Advisory Council: Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This 15-member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, policies, and regulations required by the SDWA. The terms of four (4) members expire in December 2006. To maintain the representation required in the statute, nominees for the 2007 Council should represent State and local officials concerned with public water supply and public health protection (2 vacancies) or represent the general public (2 vacancies). All nominations will be fully considered, but applicants need to be aware of the specific representation needed as well as geographical balance so that all major areas of the U.S. (East, Mid-West, South, Mountain, South-West, and West) will be represented.

DATES: Submit nominations via U.S. mail on or before November 15, 2006.

ADDRESSES: Address all nominations to Daniel Malloy, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Daniel Malloy, Designated Federal Officer, *malloy.daniel@epa.gov* or call 202–564–1724.

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: The Council consists of 15 members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with public water supply and public health protection; and five members represent private organizations or groups demonstrating an active interest in the field of public water supply and public health protection. The SDWA requires that at least two members of the Council represent small, rural public water systems. Additionally, members may be asked to serve on one of the Council's workgroups that are established on an as needed basis to assist EPA in addressing specific program issues. On December 15 of each year, some members complete their appointment. Therefore, this notice solicits nominations to fill four vacancies with terms ending on December 15, 2009.

Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Conference calls will be scheduled if needed.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume, providing the nominee's background, experience and qualifications.

Dated: September 27, 2006.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E6–16380 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2004–0122; FRL–8070–3]

Risk Management Practices for Nanoscale Materials; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is convening a public meeting on risk management practices under a possible stewardship program for nanoscale materials under the Toxic Substances Control Act (TSCA). EPA is considering development of a stewardship program for such nanoscale materials. This program is being explored to encourage responsible commercial development of nanoscale materials. The stewardship program will also enable EPA, affected industry, and other stakeholders to build the capacity to assess potential risks to human health and the environment from nanoscale materials and to identify risk management practices available to reduce such potential risks. EPA is requesting comments at the public meeting on: Risk management practices currently used or potentially available for use for nanoscale materials, the rationale for the use of these practices and the effectiveness or efficiency of these practices, and issues to consider for including risk management practices for nanoscale materials in the stewardship program. These comments will inform EPA on risk management practices to include in the stewardship program.

DATES: The meeting will be held on October 19, 2006, from 8 a.m. to 5 p.m., and on October 20, 2006, from 8 a.m. to 2:30 p.m.

Comments must be received on or before 8 a.m., October 19, 2006.

Requests to present oral comments must be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT** before October 16, 2006. Time for oral comments may be limited, depending on the number of requests received.

Requests to attend the meeting may be submitted electronically through the Eastern Research Group (ERG) registration website at *https://www2.ergweb.com/projects/conferences/nano* by October 16, 2006. Advance requests will assist in planning adequate seating; however, members of the public may attend without prior registration. Requests for special accommodations may also be submitted through the ERG registration website by October 16, 2006.

ADDRESSES: The meeting will be held at the L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2004–0122, by one of the following methods:

- *Federal eRulemaking Portal. http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2004–0122. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2004–0122. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other 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, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in EPA West, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at *http://www.epa.gov/epahome/dockets.htm*.

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: Scott Prothero, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8514; e-mail address: *prothero.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who manufacture, import, process, or use nanoscale materials 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.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may have an interest in this matter. 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM that you mail to EPA as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

Nanoscale materials are chemical substances containing structures in the length scale of approximately 1 to 100 nanometers, and may have different molecular organizations and properties than the same chemical substances in a larger size.

EPA is considering a stewardship program pertaining to these nanoscale materials. (See the **Federal Register** of May 10, 2005 (70 FR 24574-24576) (FRL–7700–7.) Information derived from the stewardship program would allow EPA and the affected industry to better understand the issues with respect to potential risks and for EPA to gain experience in the evaluation of such types of chemical substances.

EPA has received input from the National Pollution Prevention and Toxics Advisory Committee (NPPTAC) regarding the intended outcomes of a voluntary program in the form of an Overview Document (Ref.1). The

Overview Document indicates that the program should:

1. Give EPA and the public a better understanding of the types of nanoscale materials produced in the United States. Characteristics of these materials that should be identified include: Physical, chemical, hazard and exposure characteristics; production volume; and the uses of the materials.

2. Help EPA develop a capacity and process for identifying and assessing risks of engineered nanoscale materials.

3. Help EPA determine what information it needs about engineered nanoscale materials and articulate those information needs to industry and other stakeholder groups.

4. Help EPA understand what risk management practices are being employed during production, processing, use and disposal stages, and what additional risk management practices should be considered for implementation.

5. Prompt or reinforce the implementation of risk management practices.

6. Provide the information and experience needed to develop an overall approach to the treatment of nanoscale chemical substances under TSCA that builds public trust in nanoscale materials while enabling innovation and responsible development. The Overview Document indicated that participants in the program should implement basic risk management practices or other environmental or occupational health protection controls (e.g., worker training, hazard communication (including Material Safety Data Sheet (MSDS)), use of available engineering controls, provision of personal protective equipment, product labeling, customer training, waste management practices, etc.). The Overview Document also suggested that, in developing the program, EPA should hold one or more public peer consultation meetings. Among other issues, the meeting(s) would address risk management practices to be included in a basic program and in an in-depth program, each offered under the overall program (Ref. 1).

EPA is holding this public meeting to assist in elaborating possible risk management practices for the stewardship program. The public meeting will involve panel discussions of EPA's discussion paper on possible risk management practices for the basic program, with time allotted for public comment. EPA will place in the public docket and the ERG registration website the discussion paper on possible risk management practices for nanoscale materials as well as an agenda for the meeting.

III. Issues for EPA and Stakeholders

EPA is requesting comments on the following risk management practices for nanoscale materials:

1. Worker training, including work practices.
2. Hazard communication.
3. Engineering controls.
4. Personal protective equipment.
5. Product labeling.
6. Customer training.
7. Waste management and environmental release management.

Comments in these specific areas will be particularly helpful:

- Risk management practices currently used for nanoscale materials.
- Risk management practices that could potentially be used for nanoscale materials.
- Rationale for the use of these practices and the effectiveness or efficiency of these practices.
- Issues to consider for determining risk management practices for nanoscale materials to include in the basic program.
- Comments on EPA's proposed risk management practices for nanoscale materials in the basic program.

EPA is also requesting comments on:

1. Other risk management practices for nanoscale materials that should be considered.

2. Consideration for possible additional risk management practices for nanoscale materials in the in-depth program.

IV. References

The following references have been placed in the public docket that was established under docket ID number EPA–HQ–OPPT–2004–0122 for this action as indicated under **ADDRESSES**.

1. NPPTAC. November 22, 2005. Overview of Issues for Consideration by NPPTAC.

2. Discussion paper for public meeting on risk management practices for nanoscale materials.

3. Agenda for public meeting on risk management practices for nanoscale materials.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Nanoscale materials.

Dated: September 22, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E6–16385 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0785; FRL–8064–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before November 3, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0785, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0785. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going

through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6224; e-mail address: *miller.joanne @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol*: 62719-LAT. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: XDE-742 Technical Herbicide. *Active ingredient*: pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide at 99%. *Proposal classification/Use*: None/Manufacturing Use.

2. *File Symbol*: 62719-LAI. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: GF-1674 Herbicide. *Active ingredient*: pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide at 2.87%. *Proposal classification/Use*: None/Control of annual grass and broadleaf weeds in winter wheat.

3. *File Symbol*: 62719-LAO. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268-1054. *Product name*: GF-1274 Herbicide. *Active ingredient*: pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide at 7.5%. *Proposal classification/Use*: None/Control of annual grass and broadleaf weeds in winter wheat.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: September 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–16108 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0201; FRL–8097–4]

Organic Arsenical Herbicides MSMA, DSMA, CAMA, and Cacodylic Acid, Reregistration Eligibility Decision; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a notice in the **Federal Register** of August 9, 2006, concerning the availability of the reregistration eligibility decision for the organic arsenical herbicides MSMA, DSMA, CAMA, and cacodylic acid. This document is extending the comment period for 30 days, from October 10, 2006, to November 9, 2006.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0201 must be received on or before November 9, 2006.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of August 9, 2006.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; e-mail address:*wormell.lance@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice of August 9, 2006, a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in **SUPPLEMENTARY INFORMATION** of the August 9, 2006 **Federal Register** notice. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the**Federal Register** of August 9, 2006 (71 FR 45554) (FRL–8085–9). In that document, EPA announced the availability of the reregistration eligibility decision document for the organic arsenical herbicides MSMA, DSMA, CAMA, and cacodylic acid. EPA is hereby extending the comment period, which was set to end on October 10, 2006, toNovember 9, 2006.

III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period, if additional time for comment is requested. In this case, the Monomethyl Arsonic Acid (MAA) Research Tack Force has requested additional time to develop comments on newly availabile information.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 22, 2006.

Debra Edwards,

Director, Special Review and Reregistration, Division, Office of Pesticide Programs.

[FR Doc. E6–16382 Filed 10–3–06; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 92]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and Request for Comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of collection of information on those who are to respond, including through the use of appropriated automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Written comments should be received on or before December 4, 2006 to be assured of consideration.

ADDRESSES: Direct all comments or requests for additional information to Solomon Bush, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3353m or *Solomon.bush@exim.gov.*

Titles and Form Numbers: Export-Import Bank of the United States Application for Long-Term Loan or Guarantee, EID 95–10.

OMB Number: 3048–0014.

Type of Review: Revision and extension of a currently approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to determine eligibility for the loan and guarantee programs.

Affected Public: Business or other for-profit.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of U.S. exports.

Estimated Annual Respondents: 84.

Estimated Time Per Respondent: 1.5 hours.

Estimated Annual Burden: 126 hours.

Frequency of Response: When applying for a long-term preliminary or final commitment.

Dated: September 26, 2006

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 06–8472 Filed 10–3–06; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 26, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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: Written comments should be submitted on or before November 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466 or via the Internet at *Allison_E._Zaleski@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318, 73.685, 73.1630, Blanketing Interference.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time per Response: 1–2 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 41,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 73.88 (AM) states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour. 47 CFR Section 73.318(b)(FM) states that after January 1, 1985, permittees or licensees who either (1) Commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR Section 73.318(c)(FM) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR Sections 73.88(AM), 73.318(FM), and 73.685(d)(TV), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, "Blanketing Interference." This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16218 Filed 10–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

September 1, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

DATES: Revision of a currently approved collection, effective on September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Nicole R. On'gele, Federal

Communications Commission, 445 12th Street, SW., Washington, DC 20554 (202) 418–2991 or via the Internet at *nicole.ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0690.

OMB Approval Date: September 1, 2006.

Expiration Date: September 30, 2009.

Title: Section 101.17, Performance Requirements for the 38.6–40.0 GHz Frequency Band—(Note Title Change).

Form No.: N/A.

Estimated Annual Burden: 195 responses; 390 total annual burden hours; $52,000.

Needs and Uses: The Commission is revising this information collection because we have eliminated FCC Forms 415/415T from this collection because the reporting requirements have been incorporated into FCC Form 601 (OMB Control No. 3060–0798). We also removed Section 101.103 from this collection because it is approved under a separate OMB Control Number 3060–0718. The only remaining rule in this collection is Section 101.17, which requires licensees on frequencies in the 38.6–40.0 GHz band to demonstrate substantial performance when their license terms expire, in order to renew their licenses.

All 38.6–40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which they hold a license, in each EA or portion of EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service that rises to the level of "substantial": (1) A description of the 38.6–40.0 GHz band licensee's current service in terms of geographic coverage; (2) a description of the 38.6–40.0 GHz band licensee's current service in terms of population served, as well as any additional service provided during the license term; and (3) a description of the 38.6–40.0 GHz band licensee's investments in its system(s) (type of facilities constructed and their operational status is required). Any 38.6–40.0 GHz band licensees adjudged not to be providing substantial service will not have their licenses renewed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16219 Filed 10–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 26, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 4, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0565.

Title: Section 76.944, Commission Review of Franchising Decisions on Rates for the Basic Service Tier and Associated Equipment.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 32.

Estimated Time per Response: 20–30 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 816 hours.

Total Annual Cost: $3,200.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 76.944(b) provides that any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decision-making authority, the state shall forward a copy of the appeal to the appropriate local officials. Oppositions may be filed within 15 days after the appeal is filed, and must be served on the parties appealing the rate decision. Replies may be filed seven (7) days after the last day for oppositions and shall be served on the parties to the proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16220 Filed 10–3–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 06–163; FCC 06–124]

Terry Keith Hammond, Licensee, Station KBKH(FM), Shamrock, TX

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing proceeding by directing Terry Keith Hammond, the licensee of Station KBKH(FM), Shamrock, Texas, to show cause why the license of Station KBKH(FM) should not be revoked, and by designating the license renewal application for Station KBKH(FM) for an evidentiary hearing on issues relating to

Terry Keith Hammond's qualifications to be and remain a Commission licensee.

DATES: Petitions by persons desiring to participate as a party in the hearing, pursuant to 47 CFR 1.223, may be filed not later than November 3, 2006. See **SUPPLEMENTARY INFORMATION** section for dates that named parties should file appearances.

ADDRESSES: Please file documents with the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judy Lancaster or Anjali K. Singh, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1420; Jennifer A. Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order, FCC 06–124, released September 15, 2006. The full text of the Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order is available for inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents for BCPI, please provide the appropriate FCC document number, FCC 06–124. The Order is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS): *http://hraunfoss.fcc.gov/edocs-public/SilverStream/Pages/edocs.html.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), (202) 418–0432 (tty).

Summary of the Order: In the Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order, the Commission commences a hearing proceeding to determine whether Terry Keith Hammond, the licensee of Station KBKH(FM), Shamrock, Texas, is qualified to be and remain a Commission licensee, whether Hammond's application for renewal of the license of Station KBKH(FM) should be granted, and whether a monetary forfeiture should be assessed against Hammond.

The Commission received a complaint that alleged, among other things, that Hammond was not operating the station in accordance with its authorization and that Hammond had been convicted of felony theft. The Commission conducted an investigation and inspection of Station KBKH(FM) which revealed that the station is not operating in accordance with the terms of its license and that Hammond has not requested authority to do so, thereby violating Commission rules. Specifically, the station is operating from a site other than the site which is authorized in its license and at a reduced power level. In addition, the investigation revealed that Hammond failed to construct the station's upgraded facilities, but nevertheless filed a license application in which he apparently made false certifications, misrepresentations of fact and/or demonstrated a lack of candor. The Commission directed Terry Keith Hammond to respond to letters of inquiry concerning his felony conviction and the operation of Station KBKH(FM), but he failed to provide full and complete responses and documents. During the pendency of the investigation, Terry Keith Hammond timely filed a license renewal application for Station KBKH(FM) in which he failed to disclose his felony conviction.

The Commission determined that the fact of Terry Keith Hammond's felony conviction raises a substantial and material question of fact as to his qualifications to be and to remain a Commission licensee and may warrant revocation of the license of Station KBKH(FM). Thus, pursuant to Sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a) and (c) and § 1.91 of the Commission's rules, 47 CFR 1.91, the Order to Show Cause directs Terry Keith Hammond to show cause why the license of Station KBKH(FM), Shamrock, Texas, should not be revoked, upon the following issues:

1. To determine the effect of Terry Keith Hammond's felony conviction on his qualifications to be and remain a Commission licensee;

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Terry Keith Hammond is qualified to be and to remain a Commission licensee and whether the license for Station KBKH(FM), Shamrock, Texas, should be revoked. Moreover, the Commission determined that there are substantial and material questions of fact as to whether Terry Keith Hammond may have made false certifications, misrepresented facts to or lacked candor with the Commission regarding construction of upgraded facilities for Station KBKH(FM) and regarding his criminal felony conviction. Misrepresentation, lack of candor and false certification are the types of serious violations of the Commission's rules that may be grounds for denying a license renewal application. In addition, Terry Keith Hammond's operation of Station KBKH(FM) substantially at variance with the terms of its authorizations and other apparent violations of the Commission's rules, including his failure to respond fully to Commission inquiries, raise a substantial and material question of fact as to whether his application for renewal of the Station KBKH(FM) license should be granted and whether his existing license should be revoked.

Thus, pursuant to Sections 309(e) and 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), (k), the Commission designated the KBKH(FM) license renewal application for an evidentiary hearing, specifying the following issues:

3. To determine whether Terry Keith Hammond made false certifications, misrepresentations and/or lacked candor in his License Upgrade Application (File No. BLH–20030122AEG, as amended), in violation of § 73.1015 of the Commission's rules;

4. To determine whether Terry Keith Hammond made false certifications, misrepresentations and/or lacked candor in his Renewal Application, in violation of § 73.1015 of the Commission's rules (File No. BRH–20050401AAA);

5. To determine whether Terry Keith Hammond willfully and/or repeatedly violated §§ 73.1350(a), 73.1560(b) and (d) and/or 73.1745(a) of the Commission's rules, by operating Station KBKH(FM) at a location, power and antenna height that were not authorized by the station's license;

6. To determine whether Terry Keith Hammond willfully and/or repeatedly violated § 11.35 of the Commission's rules, by failing to maintain operational EAS equipment and station logs concerning EAS equipment and tests for Station KBKH(FM);

7. To determine whether Terry Keith Hammond willfully and/or repeatedly violated § 73.1015 of the Commission's rules by failing to provide full and complete responses and documents as directed by letters of inquiry issued by the staff of the Enforcement Bureau on June 14, 2004, and August 10, 2004; and

8. To determine, in light of the evidence adduced pursuant to the foregoing designated issues, whether the captioned application for renewal of the license for Station KBKH(FM) should be granted, or denied.

Copies of the Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order are being sent by certified mail, return receipt requested, to Terry Keith Hammond. To avail himself of the opportunity to be heard, Terry Keith Hammond, pursuant to § 1.91(c) and § 1.221 of the Commission's rules, 47 CFR 1.91(c) and 47 CFR 1.221, in person or by his attorney, must within 30 days of the release of this Order, file in triplicate a written notice of appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Terry Keith Hammond pursuant to § 73.3594 of the Commission's rules, 47 CFR 73.3594, shall give notice of the hearing within the time and in the manner prescribed in 47 CFR 73.3594, and shall advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16217 Filed 10–3–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–11]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. OP–1246]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2006–35]

NATIONAL CREDIT UNION ADMINISTRATION

Interagency Guidance on Nontraditional Mortgage Product Risks

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Final guidance.

SUMMARY: The OCC, Board, FDIC, OTS, and NCUA (the Agencies), are issuing final Interagency Guidance on Nontraditional Mortgage Product Risks (guidance). This guidance has been developed to clarify how institutions can offer nontraditional mortgage products in a safe and sound manner, and in a way that clearly discloses the risks that borrowers may assume.

FOR FURTHER INFORMATION CONTACT:

OCC: Gregory Nagel, Credit Risk Specialist, Credit and Market Risk, (202) 874–5170; or Michael S. Bylsma, Director, or Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750.

Board: Brian Valenti, Supervisory Financial Analyst, (202) 452–3575; or Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521; or Sabeth I. Siddique, Assistant Director, (202) 452–3861, Division of Banking Supervision and Regulation; Kathleen C. Ryan, Counsel, Division of Consumer and Community Affairs, (202) 452–3667; or Andrew Miller, Counsel, Legal Division, (202) 452–3428. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

FDIC: Suzy S. Gardner, Examination Specialist, (202) 898–3640, or April Breslaw, Chief, Compliance Section, (202) 898–6609, Division of Supervision and Consumer Protection; or Ruth R. Amberg, Senior Counsel, (202) 898–3736, or Richard Foley, Counsel, (202) 898–3784, Legal Division.

OTS: William Magrini, Senior Project Manager, Examinations and Supervision Policy, (202) 906–5744; or Fred Phillips-Patrick, Director, Credit Policy, (202) 906–7295; or Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7158.

NCUA: Cory Phariss, Program Officer, Examination and Insurance, (703) 518–6618.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies developed this guidance to address risks associated with the growing use of mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products, referred to variously as "nontraditional", "alternative", or "exotic" mortgage loans (hereinafter referred to as nontraditional mortgage loans), include "interest-only" mortgages and "payment option" adjustable-rate mortgages. These products allow borrowers to exchange lower payments during an initial period for higher payments during a later amortization period.

While similar products have been available for many years, the number of institutions offering them has expanded rapidly. At the same time, these products are offered to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgages. The Agencies are concerned that some borrowers may not fully understand the risks of these products. While many of these risks exist in other adjustable-rate mortgage products, the Agencies concern is elevated with nontraditional products because of the lack of principal amortization and potential for negative amortization. In addition, institutions are increasingly combining these loans with other features that may compound risk. These features include simultaneous second-lien mortgages and the use of reduced documentation in evaluating an applicant's creditworthiness.

In response to these concerns, the Agencies published for comment proposed Interagency Guidance on Nontraditional Mortgage Products, 70 FR 77249 (Dec. 29, 2005). The Agencies proposed guidance in three primary areas: "Loan Terms and Underwriting Standards", "Portfolio and Risk Management Practices", and "Consumer Protection Issues". In the first section, the Agencies sought to ensure that loan terms and underwriting standards for

nontraditional mortgage loans are consistent with prudent lending practices, including credible consideration of a borrower's repayment capacity. The portfolio and risk management practices section outlined the need for strong risk management standards, capital levels commensurate with the risk, and an allowance for loan and lease losses (ALLL) that reflects the collectibility of the portfolio. Finally, the consumer protection issues section recommended practices to ensure consumers have clear and balanced information prior to making a product choice. Additionally, this section described control systems to ensure that actual practices are consistent with policies and procedures.

The Agencies together received approximately 100 letters in response to the proposal.[1] Comments were received from financial institutions, trade associations, consumer and community organizations, state financial regulatory organizations, and other members of the public.

II. Overview of Public Comments

The Agencies received a full range of comments. Some commenters applauded the Agencies' initiative in proposing the guidance, while others questioned whether guidance is needed.

A majority of the depository institutions and industry groups that commented stated that the guidance is too prescriptive. They suggested institutions should have more flexibility in determining appropriate risk management practices. A number observed that nontraditional mortgage products have been offered successfully for many years. Others opined that the guidance would stifle innovation and result in qualified borrowers not being approved for these loans. Further, many questioned whether the guidance is an appropriate mechanism for addressing the Agencies' consumer protection concerns.

A smaller subset of commenters argued that the guidance does not go far enough in regulating or restricting nontraditional mortgage products. These commenters included consumer organizations, individuals, and several community bankers. Several stated these products contribute to speculation and unsustainable appreciation in the housing market. They expressed concern that severe problems will occur if and when there is a downturn in the economy. Some also argued that these products are harmful to borrowers and that borrowers may not understand the associated risks.

Many commenters voiced concern that the guidance will not apply to all lenders, and thus federally regulated financial institutions will be at a competitive disadvantage. The Agencies note that both State financial regulatory organizations that commented on the proposed guidance—the Conference of State Bank Supervisors (CSBS) and the State Financial Regulators Roundtable (SFRR)—committed to working with State regulatory agencies to distribute guidance that is similar in nature and scope to the financial service providers under their jurisdictions.[2] These commenters noted their interest in addressing the potential for inconsistent regulatory treatment of lenders based on whether or not they are supervised solely by state agencies. Subsequently, the CSBS, along with a national organization representing state residential mortgage regulators, issued a press release confirming their intent to offer guidance to State regulators to apply to their licensed residential mortgage brokers and lenders.[3]

III. Final Joint Guidance

The Agencies made a number of changes to the proposal to respond to commenters' concerns and to provide additional clarity. Significant comments on the specific provisions of the proposed guidance, the Agencies" responses, and changes to the proposed guidance are discussed as follows.

Scope of the Guidance

Many financial institution and trade group commenters raised concerns that the proposed guidance did not adequately define "nontraditional mortgage products". They requested clarification of which products would be subject to enhanced scrutiny. Some suggested that the guidance focus on products that allow negative amortization, rather than interest-only loans. Others suggested excluding certain products with nontraditional features, such as reverse mortgages and home equity lines of credit (HELOCs). Those commenting on interest-only loans noted that they do not present the same risks as products that allow for negative amortization. Those that argued that HELOCs should be excluded noted that they are already covered by interagency guidance issued in 2005. They also noted that the principal amount of these loans is generally lower than that for first mortgages. As for reverse mortgages, the commenters pointed out that they were developed for a specific market segment and do not present the same concerns as products mentioned in the guidance.

To address these concerns, the Agencies are clarifying the types of products covered by the guidance. In general, the guidance applies to all residential mortgage loan products that allow borrowers to defer repayment of principal or interest. This includes all interest-only products and negative amortization mortgages, with the exception of HELOCs. The Agencies decided not to include HELOCs in this guidance, other than as discussed in the Simultaneous Second-Lien Loans section, since they are already covered by the May 2005 Interagency *Credit Risk Management Guidance for Home Equity Lending*. The Agencies are amending the May 2005 guidance, however, to address the consumer disclosure recommendations included in the nontraditional mortgage guidance.

The Agencies decided against focusing solely on negative amortization products. Many of the interest-only products pose risks similar to products that allow negative amortization, especially when combined with high leverage and reduced documentation. Accordingly, they present similar concerns from a risk management and consumer protection standpoint. The Agencies did, however, agree that reverse mortgages do not present the types of concerns that are addressed in the guidance and should be excluded.

Loan Terms and Underwriting Standards

Qualifying Borrowers

The Agencies proposed that for all nontraditional mortgage products, the analysis of borrowers' repayment

[1] Nine of these letters requested a thirty-day extension of the comment period, which the Agencies granted.

[2] Letter to J. Johnson, Board Secretary, *et al.* from N. Milner, President & CEO, Conference of State Bank Supervisors (Feb. 14, 2006); Letter to J. Johnson, Board Secretary, *et al.*, from B. Kent, Chair, State Financial Regulators Roundtable.

[3] Media Release, CSBS & American Association of Residential Mortgage Regulators, "CSBS and AARMR Consider Guidance on Nontraditional Mortgage Products for State-Licensed Entities" (June 7, 2006), available at *http://www.csbs.org/Content/NovigotionMenu/PublicRelotions/PressReleoses/News_Releoses.htm*. The press release stated:

> The guidance being developed by CSBS and AARMR is based upon proposed guidance issued in December 2005 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.
>
> The Federal guidance, when finalized, will only apply to insured financial institutions and their affiliates. CSBS and AARMR intend to develop a modified version of the guidance which will primarily focus on residential mortgage underwriting and consumer protection. The guidance will be offered to State regulators to apply to their licensed residential mortgage brokers and lenders.

capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, the proposed guidance stated that for products that permit negative amortization, the repayment analysis should include the initial loan amount plus any balance increase that may accrue from negative amortization. The amount of the balance increase is tied to the initial terms of the loan and estimated assuming the borrower makes only the minimum payment.

Generally, banks and industry groups believed that the proposed underwriting standards were too prescriptive and asked for more flexibility. Consumer groups generally supported the proposed underwriting standards, warning that deteriorating underwriting standards are bad for individual borrowers and poor public policy.

A number of commenters suggested that industry practice is to underwrite payment option adjustable-rate mortgages at the fully indexed rate, assuming a fully amortizing payment. Yet several commenters argued that this standard should not be required when risks are adequately mitigated. Moreover, many commenters opposed assuming a fully amortizing payment for interest-only loans with extended interest-only periods. They argued that the average life span of most mortgage loans makes it unlikely that many borrowers will experience the higher payments associated with amortization. Additionally, many commenters opposed the assumption of minimum payments during the deferral period for products that permit negative amortization on the ground that this assumption suggests that lenders assume a worst-case scenario.

The Agencies believe that institutions should maintain qualification standards that include a credible analysis of a borrower's capacity to repay the full amount of credit that may be extended. That analysis should consider both principal and interest at the fully indexed rate. Using discounted payments in the qualification process limits the ability of borrowers to demonstrate sufficient capacity to repay under the terms of the loan. Therefore, the proposed general guideline of qualifying borrowers at the fully indexed rate, assuming a fully amortizing payment, including potential negative amortization amounts, remains in the final guidance.

Regarding interest-only loans with extended interest-only periods, the Agencies note that since the average life of a mortgage is a function of the housing market and interest rates, the average may fluctuate over time. Additionally, the Agencies were concerned that excluding these loans from the underwriting standards could cause some creditors to change their market offerings to avoid application of the guidance. Accordingly, the final guidance does not exclude interest-only loans with extended interest-only periods.

Finally, regarding the assumption for the amount that the balance may increase due to negative amortization, the Agencies have revised the language to respond to commenters' requests for clarity. The basic standard, however, remains unchanged. The Agencies expect a borrower to demonstrate the capacity to repay the full loan amount that may be advanced.[4] This includes the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The final document contains guidance on determining the amount of any balance increase that may accrue from the negative amortization provision, which does not necessarily equate to the full negative amortization cap for a particular loan.

The Agencies requested comment on whether the guidance should address consideration of future income or other future events in the qualification standards. The commenters generally agreed that there is no reliable method for considering future income or other future events in the underwriting process. Accordingly, the Agencies have not modified the guidance to address these issues.

Collateral-Dependent Loans

Commenters that specifically addressed this aspect of the guidance concurred that it is unsafe and unsound to rely solely on an individual borrower's ability to sell or refinance once amortization commences. However, many expressed concern about the possibility that the term "collateral-dependent", as it is used in the guidance, would be interpreted to apply to stated income and other reduced documentation loans.

To address this concern, the Agencies provided clarifying language in a footnote to this section. The final guidance provides that a loan will not be determined to be collateral-dependent solely because it was underwritten using reduced documentation.

Risk Layering

Financial institution and industry group commenters were generally critical of the risk layering provisions of the proposed guidance on the grounds that they were too prescriptive. These commenters argued that institutions should have flexibility in determining factors that mitigate additional risks presented by features such as reduced documentation and simultaneous second-lien loans. A number of commenters, however, including community and consumer organizations, financial institutions, and industry associations, suggested that reduced documentation loans should not be offered to subprime borrowers. Others questioned whether stated income loans are appropriate under any circumstances, when used with nontraditional mortgage products, or when used for wage earners who can readily provide standard documentation of their wages. Several commenters argued that simultaneous second-lien loans should be paired with nontraditional mortgage loans only when borrowers will continue to have substantial equity in the property.

The Agencies believe that the guidance provides adequate flexibility in the methods and approaches to mitigating risk, with respect to risk layering. While the Agencies have not prohibited any of the practices discussed, the guidance uniformly suggests strong quality control and risk mitigation factors with respect to these practices.

The Agencies declined to provide guidance recommending reduced documentation loans be limited to any particular set of circumstances. The final guidance recognizes that mitigating factors may determine whether such loans are appropriate but reminds institutions that a credible analysis of both a borrower's willingness and ability to repay is consistent with sound and prudent lending practices. The final guidance also cautions that institutions generally should be able to readily document income for wage earners through means such as W–2 statements, pay stubs, or tax returns.

Portfolio and Risk Management Practices

Many financial institution and industry group commenters opposed provisions of the proposed guidance for the setting of concentration limits. Some commenters advocated active monitoring of concentrations of diversification strategies as more

[4] This is similar to the standard in the Agencies' May 2005 *Credit Risk Management Guidance for Home Equity Lending* recommending that, for interest-only and variable rate HELOCs, borrowers should demonstrate the ability to amortize the fully drawn line over the loan term.

appropriate approaches. The intent of the guidance was not to set hard concentration limits for nontraditional mortgage products. Instead, institutions with concentrations in these products should have well-developed monitoring systems and risk management practices. The guidance was clarified to reiterate this point.

Additionally, a number of financial institution and industry association commenters opposed the provisions regarding third-party originations. They argued that the proposal would force lenders to have an awareness and control over third-party practices that is neither realistic nor practical. In particular, many of these commenters argued that lenders should not be responsible for overseeing the marketing and borrower disclosure practices of third parties.

Regarding controls over third-party practices, the Agencies clarified their expectations that institutions should have strong systems and controls for establishing and maintaining relationships with third parties. Reliance on third-party relationships can significantly increase an institution's risk profile. The guidance, therefore, emphasizes the need for institutions to exercise appropriate due diligence prior to entering into a third-party relationship and to provide ongoing, effective oversight and controls. In practice, an institution's risk management system should reflect the complexity of its third-party activities and the overall level of risk involved.

A number of commenters urged the Agencies to remove language in the proposed guidance relating to implicit recourse for loans sold in the secondary market. They expressed concern that the proposal added new capital requirements. The Agencies clarified the language in the guidance addressing this issue. The Agencies do not intend to establish new capital requirements. Instead, the Agencies' intent is to reiterate existing guidelines regarding implicit recourse under the Agencies' risk-based capital rules.

Consumer Protection Issues

Communications With Consumers

Many financial institution and trade group commenters suggested that the Agencies' consumer protection goals would be better accomplished through generally applicable regulations, such as Regulation Z (Truth in Lending)[5] or Regulation X (Real Estate Settlement Procedures).[6] Some commenters stated that the proposed guidance would add burdensome new disclosure requirements and cause a confusing overlap with current Regulation Z requirements. They also expressed concern that the guidance would contribute to an overload of information currently provided to consumers. Additionally, some argued that implementing the disclosure provisions might trigger Regulation Z requirements concerning advertising.[7] Some commenters also urged the Agencies to adopt model disclosure forms or other descriptive materials to assist in compliance with the guidance.

Some commenters voiced concern that the Agencies are attempting to establish a suitability standard similar to that used in the securities context. These commenters argued that lenders are not in a position to determine which products are most suitable for borrowers, and that this decision should be left to borrowers themselves.

Finally, several community and consumer organization commenters questioned whether additional disclosures are sufficient to protect borrowers and suggested various additional measures, such as consumer education and counseling.

The Agencies carefully considered the commenters' argument that consumer protection issues—particularly, disclosures—would be better addressed through generally applicable regulations. The Agencies determined, however, that given the growth in this market, guidelines are needed now to ensure that consumers will receive the information they need about the material features of nontraditional mortgages as soon as possible.

The Agencies also gave careful consideration to the commenters' concerns that the guidelines will overlap with Regulation Z, add to the disclosure burden on lenders, and contribute to information overload. While the Agencies are sensitive to these concerns, we do not believe they warrant significant changes to the guidance. The guidance focuses on providing information to consumers during the pre-application shopping phase and post-closing with any monthly statements lenders choose to provide to consumers. Moreover, the Agencies do not anticipate that the information outlined in the guidance will result in additional lengthy disclosures. Rather, the Agencies contemplate that the information can be provided in brief narrative format and through the use of examples based on hypothetical loan transactions.[8] We have, however, revised the guidance to make clear that transaction-specific disclosures are not required. Institutions will still need to ensure that their marketing materials promoting their products comply with Regulation Z, as applicable.

As previously discussed, some commenters, including industry trade associations, asked the Agencies to include model or sample disclosures or other descriptive materials as part of the guidance to assist lenders, including smaller institutions, in following the recommended practices for communications with consumers. The Agencies have determined not to include required model or sample disclosures in the guidance. Instead, the guidance provides a set of recommended practices to assist institutions in addressing particular risks raised by nontraditional mortgage products.

The Agencies have determined that it is desirable to first seek public comment on potential model disclosures, and in a **Federal Register** notice accompanying this guidance are seeking comment on proposed illustrations of consumer information for nontraditional mortgage products that are consistent with the recommendations contained in the guidance. The Agencies appreciate that some institutions, including community banks, following the recommendations set forth in the guidance may prefer not to incur the costs and other burdens of developing their own consumer information documents. The Agencies are, therefore, requesting comment on illustrations of the type of information contemplated by the guidance.

The Agencies disagree with the commenters who expressed concern that the guidance appears to establish a suitability standard, under which lenders would be required to assist borrowers in choosing products that are suitable to their needs and circumstances. It was not the Agencies' intent to impose such a standard, nor is there any language in the guidance that does so. In any event, the Agencies have revised certain statements in the proposed guidance that could have been interpreted to suggest a requirement to ensure that borrowers select products appropriate to their circumstances.

Control Systems

Several commenters requested more flexibility in designing appropriate control systems. The Agencies have

[5] 12 CFR part 226 (2006).

[6] 24 CFR part 3500 (2005).

[7] *See* 12 CFR part 226.24(c) (2006).

[8] *See* elsewhere in today's issue of the **Federal Register**. (Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products).

revised the "Control Systems" portion of the guidance to clarify that we are not requiring any particular means of monitoring adherence to an institution's policies, such as call monitoring or mystery shopping. Additional changes have also been made to clarify that the Agencies do not expect institutions to assume an unwarranted level of responsibility for the actions of third parties. Rather, the control systems that are expected for loans purchased from or originated through third parties are consistent with the Agencies' current supervisory policies. As previously discussed, the Agencies have also made changes to the portfolio and risk management practices portion of the final guidance to clarify their expectations concerning oversight and monitoring of third-party originations.

IV. Text of Final Joint Guidance

The text of the final Interagency Guidance on Nontraditional Mortgage Product Risks follows:

Interagency Guidance on Nontraditional Mortgage Product Risks

Residential mortgage lending has traditionally been a conservatively managed business with low delinquencies and losses and reasonably stable underwriting standards. In the past few years consumer demand has been growing, particularly in high priced real estate markets, for closed-end residential mortgage loan products that allow borrowers to defer repayment of principal and, sometimes, interest. These mortgage products, herein referred to as nontraditional mortgage loans, include such products as "interest-only" mortgages where a borrower pays no loan principal for the first few years of the loan and "payment option" adjustable-rate mortgages (ARMs) where a borrower has flexible payment options with the potential for negative amortization.[1]

While some institutions have offered nontraditional mortgages for many years with appropriate risk management and sound portfolio performance, the market for these products and the number of institutions offering them has expanded rapidly. Nontraditional mortgage loan products are now offered by more lenders to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgage loans and may not fully understand the associated risks.

Many of these nontraditional mortgage loans are underwritten with less stringent income and asset verification requirements ("reduced documentation") and are increasingly combined with simultaneous second-lien loans.[2] Such risk layering, combined with the broader marketing of nontraditional mortgage loans, exposes financial institutions to increased risk relative to traditional mortgage loans.

Given the potential for heightened risk levels, management should carefully consider and appropriately mitigate exposures created by these loans. To manage the risks associated with nontraditional mortgage loans, management should:

- Ensure that loan terms and underwriting standards are consistent with prudent lending practices, including consideration of a borrower's repayment capacity;
- Recognize that many nontraditional mortgage loans, particularly when they have risk-layering features, are untested in a stressed environment. As evidenced by experienced institutions, these products warrant strong risk management standards, capital levels commensurate with the risk, and an allowance for loan and lease losses that reflects the collectibility of the portfolio; and
- Ensure that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice.

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) (collectively, the Agencies) expect institutions to effectively assess and manage the risks associated with nontraditional mortgage loan products.[3]

Institutions should use this guidance to ensure that risk management practices adequately address these risks. The Agencies will carefully scrutinize risk management processes, policies, and procedures in this area. Institutions that do not adequately manage these risks will be asked to take remedial action.

The focus of this guidance is on the higher risk elements of certain nontraditional mortgage products, not the product type itself. Institutions with sound underwriting, adequate risk management, and acceptable portfolio performance will not be subject to criticism merely for offering such products.

Loan Terms and Underwriting Standards

When an institution offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins. Underwriting standards should also comply with the agencies' real estate lending standards and appraisal regulations and associated guidelines.[4]

Central to prudent lending is the internal discipline to maintain sound loan terms and underwriting standards despite competitive pressures. Institutions are strongly cautioned against ceding underwriting standards to third parties that have different business objectives, risk tolerances, and core competencies. Loan terms should be based on a disciplined analysis of potential exposures and compensating factors to ensure risk levels remain manageable.

Qualifying Borrowers—Payments on nontraditional loans can increase significantly when the loans begin to amortize. Commonly referred to as payment shock, this increase is of particular concern for payment option ARMs where the borrower makes minimum payments that may result in negative amortization. Some institutions manage the potential for excessive negative amortization and payment shock by structuring the initial terms to limit the spread between the introductory interest rate and the fully indexed rate. Nevertheless, an institution's qualifying standards should recognize the potential impact of payment shock, especially for borrowers

[1] Interest-only and payment option ARMs are variations of conventional ARMs, hybrid ARMs, and fixed rate products. Refer to the Appendix for additional information on interest-only and payment option ARM loans. This guidance does not apply to reverse mortgages; home equity lines of credit ("HELOCs"), other than as discussed in the Simultaneous Second-Lien Loans section; or fully amortizing residential mortgage loan products.

[2] Refer to the Appendix for additional information on reduced documentation and simultaneous second-lien loans.

[3] Refer to Interagency Guidelines Establishing Standards for Safety and Soundness. For each Agency, those respective guidelines are addressed in: 12 CFR part 30 Appendix A (OCC); 12 CFR part 208 Appendix D–1 (Board); 12 CFR part 364 Appendix A (FDIC); 12 CFR part 570 Appendix A (OTS); and 12 U.S.C. 1786 (NCUA).

[4] Refer to 12 CFR part 34—Real Estate Lending and Appraisals, OCC Bulletin 2005–3—Standards for National Banks' Residential Mortgage Lending, AL 2003–7—Guidelines for Real Estate Lending Policies and AL 2003–9—Independent Appraisal and Evaluation Functions (OCC); 12 CFR 208.51 subpart E and Appendix C and 12 CFR part 225 subpart G (Board); 12 CFR part 365 and Appendix A, and 12 CFR part 323 (FDIC); 12 CFR 560.101 and Appendix and 12 CFR part 564 (OTS). Also, refer to the 1999 Interagency Guidance on the "Treatment of High LTV Residential Real Estate Loans" and the 1994 "Interagency Appraisal and Evaluation Guidelines". Federally Insured Credit Unions should refer to 12 CFR part 722—Appraisals and NCUA 03–CU–17—Appraisal and Evaluation Functions for Real Estate Related Transactions (NCUA).

with high loan-to-value (LTV) ratios, high debt-to-income (DTI) ratios, and low credit scores. Recognizing that an institution's underwriting criteria are based on multiple factors, an institution should consider these factors jointly in the qualification process and may develop a range of reasonable tolerances for each factor. However, the criteria should be based upon prudent and appropriate underwriting standards, considering both the borrower's characteristics and the product's attributes.

For all nontraditional mortgage loan products, an institution's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate,[5] assuming a fully amortizing repayment schedule.[6] In addition, for products that permit negative amortization, the repayment analysis should be based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision.[7]

Furthermore, the analysis of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification in the underwriting process. The higher a loan's credit risk, either from loan features or borrower characteristics, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

Collateral-Dependent Loans—Institutions should avoid the use of loan terms and underwriting practices that may heighten the need for a borrower to rely on the sale or refinancing of the property once amortization begins. Loans to individuals who do not demonstrate the capacity to repay, as structured, from sources other than the collateral pledged are generally considered unsafe and unsound.[8] Institutions that originate collateral-dependent mortgage loans may be subject to criticism, corrective action, and higher capital requirements.

Risk Layering—Institutions that originate or purchase mortgage loans that combine nontraditional features, such as interest only loans with reduced documentation or a simultaneous second-lien loan, face increased risk. When features are layered, an institution should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance or other credit enhancements. While higher pricing is often used to address elevated risk levels, it does not replace the need for sound underwriting.

Reduced Documentation—Institutions increasingly rely on reduced documentation, particularly unverified income, to qualify borrowers for nontraditional mortgage loans. Because these practices essentially substitute assumptions and unverified information for analysis of a borrower's repayment capacity and general creditworthiness, they should be used with caution. As the level of credit risk increases, the Agencies expect an institution to more diligently verify and document a borrower's income and debt reduction capacity. Clear policies should govern the use of reduced documentation. For example, stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. For many borrowers, institutions generally should be able to readily document income using recent W–2 statements, pay stubs, or tax returns.

Simultaneous Second-Lien Loans—Simultaneous second-lien loans reduce owner equity and increase credit risk. Historically, as combined loan-to-value ratios rise, so do defaults. A delinquent borrower with minimal or no equity in a property may have little incentive to work with a lender to bring the loan current and avoid foreclosure. In addition, second-lien home equity lines of credit (HELOCs) typically increase borrower exposure to increasing interest rates and monthly payment burdens. Loans with minimal or no owner equity generally should not have a payment structure that allows for delayed or negative amortization without other significant risk mitigating factors.

Introductory Interest Rates—Many institutions offer introductory interest rates set well below the fully indexed rate as a marketing tool for payment option ARM products. When developing nontraditional mortgage product terms, an institution should consider the spread between the introductory rate and the fully indexed rate. Since initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier-than-scheduled recasting of monthly payments. Institutions should minimize the likelihood of disruptive early recastings and extraordinary payment shock when setting introductory rates.

Lending to Subprime Borrowers—Mortgage programs that target subprime borrowers through tailored marketing, underwriting standards, and risk selection should follow the applicable interagency guidance on subprime lending.[9] Among other things, the subprime guidance discusses circumstances under which subprime lending can become predatory or abusive. Institutions designing nontraditional mortgage loans for subprime borrowers should pay particular attention to this guidance. They should also recognize that risk-layering features in loans to subprime borrowers may significantly increase risks for both the institution and the borrower.

Non-Owner-Occupied Investor Loans—Borrowers financing non-owner-occupied investment properties should qualify for loans based on their ability to service the debt over the life of the

[5] The fully indexed rate equals the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate. The index rate is a published interest rate to which the interest rate on an ARM is tied. Some commonly used indices include the 1-Year Constant Maturity Treasury Rate (CMT), the 6-Month London Interbank Offered Rate (LIBOR), the 11th District Cost of Funds (COFI), and the Moving Treasury Average (MTA), a 12-month moving average of the monthly average yields of U.S. Treasury securities adjusted to a constant maturity of one year. The margin is the number of percentage points a lender adds to the index value to calculate the ARM interest rate at each adjustment period. In different interest rate scenarios, the fully indexed rate for an ARM loan based on a lagging index (e.g., MTA rate) may be significantly different from the rate on a comparable 30-year fixed-rate product. In these cases, a credible market rate should be used to qualify the borrower and determine repayment capacity.

[6] The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a loan with a 5-year interest only period and a 30-year term would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

[7] The balance that may accrue from the negative amortization provision does not necessarily equate to the full negative amortization cap for a particular loan. The spread between the introductory or "teaser" rate and the accrual rate will determine whether or not a loan balance has the potential to reach the negative amortization cap before the end of the initial payment option period (usually five years). For example, a loan with a 115 percent negative amortization cap but a small spread between the introductory rate and the accrual rate may only reach a 109 percent maximum loan balance before the end of the initial payment option period, even if only minimum payments are made. The borrower could be qualified based on this lower maximum loan balance.

[8] A loan will not be determined to be "collateral-dependent" solely through the use of reduced documentation.

[9] Interagency Guidance on Subprime Lending, March 1, 1999, and Expanded Guidance for Subprime Lending Programs, January 31, 2001. Federally insured credit unions should refer to 04–CU–12—Specialized Lending Activities (NCUA).

loan. Loan terms should reflect an appropriate combined LTV ratio that considers the potential for negative amortization and maintains sufficient borrower equity over the life of the loan. Further, underwriting standards should require evidence that the borrower has sufficient cash reserves to service the loan, considering the possibility of extended periods of property vacancy and the variability of debt service requirements associated with nontraditional mortgage loan products.[10]

Portfolio and Risk Management Practices

Institutions should ensure that risk management practices keep pace with the growth and changing risk profile of their nontraditional mortgage loan portfolios and changes in the market. Active portfolio management is especially important for institutions that project or have already experienced significant growth or concentration levels. Institutions that originate or invest in nontraditional mortgage loans should adopt more robust risk management practices and manage these exposures in a thoughtful, systematic manner. To meet these expectations, institutions should:

- Develop written policies that specify acceptable product attributes, production and portfolio limits, sales and securitization practices, and risk management expectations;
- Design enhanced performance measures and management reporting that provide early warning for increasing risk;
- Establish appropriate ALLL levels that consider the credit quality of the portfolio and conditions that affect collectibility; and
- Maintain capital at levels that reflect portfolio characteristics and the effect of stressed economic conditions on collectibility. Institutions should hold capital commensurate with the risk characteristics of their nontraditional mortgage loan portfolios.

Policies—An institution's policies for nontraditional mortgage lending activity should set acceptable levels of risk through its operating practices, accounting procedures, and policy exception tolerances. Policies should reflect appropriate limits on risk layering and should include risk management tools for risk mitigation purposes. Further, an institution should set growth and volume limits by loan type, with special attention for products and product combinations in need of heightened attention due to easing terms or rapid growth.

Concentrations—Institutions with concentrations in nontraditional mortgage products should have well-developed monitoring systems and risk management practices. Monitoring should keep track of concentrations in key portfolio segments such as loan types, third-party originations, geographic area, and property occupancy status. Concentrations also should be monitored by key portfolio characteristics such as loans with high combined LTV ratios, loans with high DTI ratios, loans with the potential for negative amortization, loans to borrowers with credit scores below established thresholds, loans with risk-layered features, and non-owner-occupied investor loans. Further, institutions should consider the effect of employee incentive programs that could produce higher concentrations of nontraditional mortgage loans. Concentrations that are not effectively managed will be subject to elevated supervisory attention and potential examiner criticism to ensure timely remedial action.

Controls—An institution's quality control, compliance, and audit procedures should focus on mortgage lending activities posing high risk. Controls to monitor compliance with underwriting standards and exceptions to those standards are especially important for nontraditional loan products. The quality control function should regularly review a sample of nontraditional mortgage loans from all origination channels and a representative sample of underwriters to confirm that policies are being followed. When control systems or operating practices are found deficient, business-line managers should be held accountable for correcting deficiencies in a timely manner. Since many nontraditional mortgage loans permit a borrower to defer principal and, in some cases, interest payments for extended periods, institutions should have strong controls over accruals, customer service and collections. Policy exceptions made by servicing and collections personnel should be carefully monitored to confirm that practices such as re-aging, payment deferrals, and loan modifications are not inadvertently increasing risk. Customer service and collections personnel should receive product-specific training on the features and potential customer issues with these products.

Third-Party Originations—Institutions often use third parties, such as mortgage brokers or correspondents, to originate nontraditional mortgage loans. Institutions should have strong systems and controls in place for establishing and maintaining relationships with third parties, including procedures for performing due diligence. Oversight of third parties should involve monitoring the quality of originations so that they reflect the institution's lending standards and compliance with applicable laws and regulations.

Monitoring procedures should track the quality of loans by both origination source and key borrower characteristics. This will help institutions identify problems such as early payment defaults, incomplete documentation, and fraud. If appraisal, loan documentation, credit problems or consumer complaints are discovered, the institution should take immediate action. Remedial action could include more thorough application reviews, more frequent re-underwriting, or even termination of the third-party relationship.[11]

Secondary Market Activity—The sophistication of an institution's secondary market risk management practices should be commensurate with the nature and volume of activity. Institutions with significant secondary market activities should have comprehensive, formal strategies for managing risks.[12] Contingency planning should include how the institution will respond to reduced demand in the secondary market.

While third-party loan sales can transfer a portion of the credit risk, an institution remains exposed to reputation risk when credit losses on sold mortgage loans or securitization transactions exceed expectations. As a result, an institution may determine that it is necessary to repurchase defaulted mortgages to protect its reputation and maintain access to the markets. In the agencies' view, the repurchase of mortgage loans beyond the selling institution's contractual obligation is

[10] Federally insured credit unions must comply with 12 CFR part 723 for loans meeting the definition of member business loans.

[11] Refer to OCC Bulletin 2001–47—Third-Party Relationships and AL 2000–9—Third-Party Risk (OCC). Federally insured credit unions should refer to 01–CU–20 (NCUA), Due Diligence over Third Party Service Providers. Savings associations should refer to OTS Thrift Bulletin 82a—Third Party Arrangements.

[12] Refer to "Interagency Questions and Answers on Capital Treatment of Recourse, Direct Credit Substitutes, and Residual Interests in Asset Securitizations", May 23, 2002; OCC Bulletin 2002–22 (OCC); SR letter 02–16 (Board); Financial Institution Letter (FIL–54–2002) (FDIC); and CEO Letter 163 (OTS). *See* OCC's Comptroller Handbook for Asset Securitization, November 1997. *See* OTS Examination Handbook Section 221, Asset-Backed Securitization. The Board also addressed risk management and capital adequacy of exposures arising from secondary market credit activities in SR letter 97–21. Federally insured credit unions should refer to 12 CFR Part 702 (NCUA).

implicit recourse. Under the agencies' risk-based capital rules, a repurchasing institution would be required to maintain risk-based capital against the entire pool or securitization.[13] Institutions should familiarize themselves with these guidelines before deciding to support mortgage loan pools or buying back loans in default.

Management Information and Reporting—Reporting systems should allow management to detect changes in the risk profile of its nontraditional mortgage loan portfolio. The structure and content should allow the isolation of key loan products, risk-layering loan features, and borrower characteristics. Reporting should also allow management to recognize deteriorating performance in any of these areas before it has progressed too far. At a minimum, information should be available by loan type (*e.g.*, interest-only mortgage loans and payment option ARMs); by risk-layering features (*e.g.*, payment option ARM with stated income and interest-only mortgage loans with simultaneous second-lien mortgages); by underwriting characteristics (*e.g.*, LTV, DTI, and credit score); and by borrower performance (*e.g.*, payment patterns, delinquencies, interest accruals, and negative amortization).

Portfolio volume and performance should be tracked against expectations, internal lending standards and policy limits. Volume and performance expectations should be established at the subportfolio and aggregate portfolio levels. Variance analyses should be performed regularly to identify exceptions to policies and prescribed thresholds. Qualitative analysis should occur when actual performance deviates from established policies and thresholds. Variance analysis is critical to the monitoring of a portfolio's risk characteristics and should be an integral part of establishing and adjusting risk tolerance levels.

Stress Testing—Based on the size and complexity of their lending operations, institutions should perform sensitivity analysis on key portfolio segments to identify and quantify events that may increase risks in a segment or the entire portfolio. The scope of the analysis should generally include stress tests on key performance drivers such as interest rates, employment levels, economic growth, housing value fluctuations, and other factors beyond the institution's immediate control. Stress tests typically assume rapid deterioration in one or more factors and attempt to estimate the potential influence on default rates and loss severity. Stress testing should aid an institution in identifying, monitoring and managing risk, as well as developing appropriate and cost-effective loss mitigation strategies. The stress testing results should provide direct feedback in determining underwriting standards, product terms, portfolio concentration limits, and capital levels.

Capital and Allowance for Loan and Lease Losses—Institutions should establish an appropriate allowance for loan and lease losses (ALLL) for the estimated credit losses inherent in their nontraditional mortgage loan portfolios. They should also consider the higher risk of loss posed by layered risks when establishing their ALLL.

Moreover, institutions should recognize that their limited performance history with these products, particularly in a stressed environment, increases performance uncertainty. Capital levels should be commensurate with the risk characteristics of the nontraditional mortgage loan portfolios. Lax underwriting standards or poor portfolio performance may warrant higher capital levels.

When establishing an appropriate ALLL and considering the adequacy of capital, institutions should segment their nontraditional mortgage loan portfolios into pools with similar credit risk characteristics. The basic segments typically include collateral and loan characteristics, geographic concentrations, and borrower qualifying attributes. Segments could also differentiate loans by payment and portfolio characteristics, such as loans on which borrowers usually make only minimum payments, mortgages with existing balances above original balances, and mortgages subject to sizable payment shock. The objective is to identify credit quality indicators that affect collectibility for ALLL measurement purposes. In addition, understanding characteristics that influence expected performance also provides meaningful information about future loss exposure that would aid in determining adequate capital levels.

Institutions with material mortgage banking activities and mortgage servicing assets should apply sound practices in valuing the mortgage servicing rights for nontraditional mortgages. In accordance with interagency guidance, the valuation process should follow generally accepted accounting principles and use reasonable and supportable assumptions.[14]

Consumer Protection Issues

While nontraditional mortgage loans provide flexibility for consumers, the Agencies are concerned that consumers may enter into these transactions without fully understanding the product terms. Nontraditional mortgage products have been advertised and promoted based on their affordability in the near term; that is, their lower initial monthly payments compared with traditional types of mortgages. In addition to apprising consumers of the benefits of nontraditional mortgage products, institutions should take appropriate steps to alert consumers to the risks of these products, including the likelihood of increased future payment obligations. This information should be provided in a timely manner—before disclosures may be required under the Truth in Lending Act or other laws—to assist the consumer in the product selection process.

Concerns and Objectives—More than traditional ARMs, mortgage products such as payment option ARMs and interest-only mortgages can carry a significant risk of payment shock and negative amortization that may not be fully understood by consumers. For example, consumer payment obligations may increase substantially at the end of an interest-only period or upon the "recast" of a payment option ARM. The magnitude of these payment increases may be affected by factors such as the expiration of promotional interest rates, increases in the interest rate index, and negative amortization. Negative amortization also results in lower levels of home equity as compared to a traditional amortizing mortgage product. When borrowers go to sell or refinance the property, they may find that negative amortization has substantially reduced or eliminated their equity in it even when the property has appreciated. The concern that consumers may not fully understand these products would be exacerbated by marketing and promotional practices that emphasize potential benefits without also providing clear and balanced information about material risks.

In light of these considerations, communications with consumers,

[13] Refer to 12 CFR part 3 Appendix A, Section 4 (OCC); 12 CFR parts 208 and 225, Appendix A, III.B.3 (FRB); 12 CFR part 325, Appendix A, II.B (FDIC); 12 CFR 567 (OTS); and 12 CFR part 702 (NCUA) for each Agency's capital treatment of recourse.

[14] Refer to the "Interagency Advisory on Mortgage Banking", February 25, 2003, issued by the bank and thrift regulatory agencies. Federally Insured Credit Unions with assets of $10 million or more are reminded they must report and value nontraditional mortgages and related mortgage servicing rights, if any, consistent with generally accepted accounting principles in the Call Reports they file with the NCUA Board.

including advertisements, oral statements, promotional materials, and monthly statements, should provide clear and balanced information about the relative benefits and risks of these products, including the risk of payment shock and the risk of negative amortization. Clear, balanced, and timely communication to consumers of the risks of these products will provide consumers with useful information at crucial decision-making points, such as when they are shopping for loans or deciding which monthly payment amount to make. Such communication should help minimize potential consumer confusion and complaints, foster good customer relations, and reduce legal and other risks to the institution.

Legal Risks—Institutions that offer nontraditional mortgage products must ensure that they do so in a manner that complies with all applicable laws and regulations. With respect to the disclosures and other information provided to consumers, applicable laws and regulations include the following:

- Truth in Lending Act (TILA) and its implementing regulation, Regulation Z.
- Section 5 of the Federal Trade Commission Act (FTC Act). TILA and Regulation Z contain rules governing disclosures that institutions must provide for closed-end mortgages in advertisements, with an application,[15] before loan consummation, and when interest rates change. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.[16]

Other Federal laws, including the fair lending laws and the Real Estate Settlement Procedures Act (RESPA), also apply to these transactions. Moreover, the Agencies note that the sale or securitization of a loan may not affect an institution's potential liability for violations of TILA, RESPA, the FTC Act, or other laws in connection with its origination of the loan. State laws, including laws regarding unfair or deceptive acts or practices, also may apply.

Recommended Practices

Recommended practices for addressing the risks raised by nontraditional mortgage products include the following:[17]

Communications with Consumers—When promoting or describing nontraditional mortgage products, institutions should provide consumers with information that is designed to help them make informed decisions when selecting and using these products. Meeting this objective requires appropriate attention to the timing, content, and clarity of information presented to consumers. Thus, institutions should provide consumers with information at a time that will help consumers select products and choose among payment options. For example, institutions should offer clear and balanced product descriptions when a consumer is shopping for a mortgage—such as when the consumer makes an inquiry to the institution about a mortgage product and receives information about nontraditional mortgage products, or when marketing relating to nontraditional mortgage products is provided by the institution to the consumer—not just upon the submission of an application or at consummation.[18] The provision of such information would serve as an important supplement to the disclosures currently required under TILA and Regulation Z or other laws.[19]

Promotional Materials and Product Descriptions. Promotional materials and other product descriptions should provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including information about the matters discussed below.

- *Payment Shock.* Institutions should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, product descriptions could state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example once amortizing payments are required and the interest rate and negative amortization caps have been reached.[20] Such information also could describe when structural payment changes will occur (*e.g.*, when introductory rates expire, or when amortizing payments are required), and what the new payment amount would be or how it would be calculated. As applicable, these descriptions could indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.
- *Negative Amortization.* When negative amortization is possible under the terms of a nontraditional mortgage product, consumers should be apprised of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization. For example, product descriptions should disclose the effect of negative amortization on loan balances and home equity, and could describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize. (One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon a sale of the home).
- *Prepayment Penalties:* If the institution may impose a penalty in the event that the consumer prepays the mortgage, consumers should be alerted to this fact and to the need to ask the lender about the amount of any such penalty.[21]
- *Cost of Reduced Documentation Loans.* If an institution offers both reduced and full documentation loan programs and there is a pricing premium attached to the reduced documentation program, consumers should be alerted to this fact.

[15] These program disclosures apply to ARM products and must be provided at the time an application is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

[16] The OCC, the Board, and the FDIC enforce this provision under the FTC Act and section 8 of the FDI Act. Each of these agencies has also issued supervisory guidance to the institutions under their respective jurisdictions concerning unfair or deceptive acts or practices. *See* OCC Advisory Letter 2002–3—Guidance on Unfair or Deceptive Acts or Practices, March 22, 2002; Joint Board and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks, March 11, 2004. Federally insured credit unions are prohibited from using any advertising or promotional material that is inaccurate, misleading, or deceptive in any way concerning its products, services, or financial condition. 12 CFR 740.2. The OTS also has a regulation that prohibits savings associations from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered. 12 CFR 563.27. This regulation supplements its authority under the FTC Act.

[17] Institutions also should review the recommendations relating to mortgage lending practices set forth in other supervisory guidance from their respective primary regulators, as applicable, including guidance on abusive lending practices.

[18] Institutions also should strive to: (1) Focus on information important to consumer decision making; (2) highlight key information so that it will be noticed; (3) employ a user-friendly and readily navigable format for presenting the information; and (4) use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers considering the nontraditional mortgage products and other loan features described in this guidance.

[19] Institutions may not be able to incorporate all of the practices recommended in this guidance when advertising nontraditional mortgages through certain forms of media, such as radio, television, or billboards. Nevertheless, institutions should provide clear and balanced information about the risks of these products in all forms of advertising.

[20] Consumers also should be apprised of other material changes in payment obligations, such as balloon payments.

[21] Federal credit unions are prohibited from imposing prepayment penalties. 12 CFR 701.21(c)(6).

Monthly Statements on Payment Option ARMs. Monthly statements that are provided to consumers on payment option ARMs should provide information that enables consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement should contain an explanation, as applicable, next to the minimum payment amount that making this payment would result in an increase to the consumer's outstanding loan balance. Payment statements also could provide the consumer's current loan balance, what portion of the consumer's previous payment was allocated to principal and to interest, and, if applicable, the amount by which the principal balance increased. Institutions should avoid leading payment option ARM borrowers to select a non-amortizing or negatively-amortizing payment (for example, through the format or content of monthly statements).

Practices to Avoid. Institutions also should avoid practices that obscure significant risks to the consumer. For example, if an institution advertises or promotes a nontraditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, the institution also should provide clear and comparably prominent information alerting the consumer to the risks. Such information should explain, as relevant, that these payment amounts will increase, that a balloon payment may be due, and that the loan balance will not decrease and may even increase due to the deferral of interest and/or principal payments. Similarly, institutions should avoid promoting payment patterns that are structurally unlikely to occur.[22] Such practices could raise legal and other risks for institutions, as described more fully above.

Institutions also should avoid such practices as: Giving consumers unwarranted assurances or predictions about the future direction of interest rates (and, consequently, the borrower's future obligations); making one-sided representations about the cash savings or expanded buying power to be realized from nontraditional mortgage products in comparison with amortizing mortgages; suggesting that initial minimum payments in a payment option ARM will cover accrued interest (or principal and interest) charges; and making misleading claims that interest rates or payment obligations for these products are "fixed".

Control Systems—Institutions should develop and use strong control systems to monitor whether actual practices are consistent with their policies and procedures relating to nontraditional mortgage products. Institutions should design control systems to address compliance and consumer information concerns as well as the safety and soundness considerations discussed in this guidance. Lending personnel should be trained so that they are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel should receive additional training, as necessary, to continue to be able to convey information to consumers in this manner. Lending personnel should be monitored to determine whether they are following these policies and procedures. Institutions should review consumer complaints to identify potential compliance, reputation, and other risks. Attention should be paid to appropriate legal review and to using compensation programs that do not improperly encourage lending personnel to direct consumers to particular products.

With respect to nontraditional mortgage loans that an institution makes, purchases, or services using a third party, such as a mortgage broker, correspondent, or other intermediary, the institution should take appropriate steps to mitigate risks relating to compliance and consumer information concerns discussed in this guidance. These steps would ordinarily include, among other things, (1) Conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third parties, (2) establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with this guidance, (3) setting requirements for agreements with such third parties, (4) establishing procedures and systems to monitor compliance with applicable agreements, bank policies, and laws, and (5) implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, bank policies, or laws.

[22] For example, marketing materials for payment option ARMs may promote low predictable payments until the recast date. Such marketing should be avoided in circumstances in which the minimum payments are so low that negative amortization caps would be reached and higher payment obligations would be triggered before the scheduled recast, even if interest rates remain constant.

Appendix: Terms Used in This Document

Interest-only Mortgage Loan—A nontraditional mortgage on which, for a specified number of years (*e.g.*, three or five years), the borrower is required to pay only the interest due on the loan during which time the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest.

Payment Option ARM—A nontraditional mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.

Reduced Documentation—A loan feature that is commonly referred to as "low doc/no doc", "no income/no asset", "stated income" or "stated assets". For mortgage loans with this feature, an institution sets reduced or minimal documentation standards to substantiate the borrower's income and assets.

Simultaneous Second-Lien Loan—A lending arrangement where either a closed-end second-lien or a home equity line of credit (HELOC) is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

Dated: September 25, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 27, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 27th day of September, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 28, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration on September 28, 2006.

JoAnn M. Johnson,

Chairman.

[FR Doc. 06–8480 Filed 10–3–06; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P, 7535–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 018423N.
Name: AA Pacific, Inc.
Address: 1275 Anderson Avenue, Unit 6, Fort Lee, NJ 07024.
Date Revoked: August 25, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016230N.
Name: A–P–A World Transport Corp.
Address: 545 Dowd Avenue, Elizabeth, NJ 07201
Date Revoked: July 25, 2006.
Reason: Surrendered license voluntarily.

License Number: 019207N.
Name: ASAV Uluslararasi Nakliyat Ve Ticaret Limited Sirketi.
Address: Mehmet Akif Caddesi 1. Sok No: 23 Daire 23 Sirinevler, Istanbul, 34180, Turkey.
Date Revoked: August 25, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016939NF.
Name: Billings Freight Systems, Inc. dba BFS Global.
Address: 3101 Towercreek Pkwy, Suite 570, Atlanta, GA 30339.
Date Revoked: September 15, 2006.
Reason: Failed to maintain valid bonds.

License Number: 019122N and 019122F.
Name: Bluefreight Worldwide Logistics, Inc.
Address: 2840 Ficus Street, Pomona, CA 91766.
Date Revoked: July 29, 2006 and July 26, 2006.
Reason: Failed to maintain valid bonds.

License Number: 018589F.
Name: Cargo International Services, Inc.
Address: 18327 SW 151 Avenue, Miami, FL 33187
Revoked: April 29, 2004.
Reason: Surrendered license voluntarily.

License Number: 019135N.
Name: Convenant International Corp.
Address: 7860 NW 80th Street, Miami, FL 33166.
Date Revoked: August 5, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018763F.
Name: Dietrich-Exccel, LLC dba Dietrich-Logistics Florida.
Address: 6701 NW 7th Street, Suite 135, Miami, FL 33126.
Date Revoked: September 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018843N.
Name: Elite Shipping, Inc.
Address: 7140 NW Miami Court, Miami, FL 33150
Date Revoked: September 2, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004130N.
Name: GSG Investment Inc. dba Worldwide Logistics Company dba WWL Trade Passage.
Address: 2411 Santa Fe Avenue, Unit C, Redondo Beach, CA 90278.
Date Revoked: August 26, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016950NF.
Name: Global Cargo Corporation.
Address: 8470 NW 30th Terrace, Miami, FL 33122.
Date Revoked: September 23, 2006.
Reason: Failed to maintain valid bonds.

License Number: 002688F.
Name: International Import Export Service, Inc.
Address: 147–04 176th Street, Suite 2–W, Jamaica, NY 11434.
Date Revoked: August 20, 2006.
Reason: Failed to maintain a valid bond.

License Number: 007057N.
Name: Jet Dispatch (H.K.) Limited.
Address: New World Office Bldg., Rm. 1211–12, E. Wing T.S.T., Kowloon, Hong Kong.
Date Revoked: August 8, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004573F.
Name: Krennerich International, Inc.
Address: 14655 Northwest Freeway, Suite 119, Houston, TX 77040.
Date Revoked: July 30, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018410F.
Name: Onebin.Com, Inc.
Address: 3406 SW 26 Terrace, Unit C–10, Fort Lauderdale, FL 33312.
Date Revoked: September 20, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004291F.
Name: Pantrac Transport Corp.
Address: Brooklyn Navy Yard, Bldg. #5, Suite 307, Flushing & Cumberland Ave., Brooklyn, NY 11205.
Date Revoked: August 27, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016572F.
Name: Sea, Air & Truck Forwarding, Inc.
Address: 2534 Walnut Bend, Suite B, Houston, TX 77042.
Date Revoked: July 30, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019094N.
Name: Sparrow Freight America, Inc. dba Seaswift America; Seaswift Freight Systems; SSA Logistics.
Address: 550 E. Carson Plaza Dr., Suite 108, Carson, CA 90746.
Date Revoked: August 25, 2006.
Reason: Failed to maintain a valid bond.

License Number: 012445N.
Name: South American Lines, Corporation.
Address: 3515 NW 114th Avenue, Miami, FL 33178.
Date Revoked: August 16, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018599F.
Name: Starlift Logistics, Inc. dba Speed of Sound.
Address: 84 Colt Street, Irvington, NJ 07111.
Date Revoked: August 25, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019142N.
Name: Transcom Express, Inc.
Address: 80 Broad Street, Suite 11M, Red Bank, NJ 07701.
Date Revoked: August 12, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019390N.
Name: Trident Universal, Inc. dba Atlantic European Container Line.
Address: 18710 Chopin Drive, Lutz, FL 33558.
Date Revoked: August 11, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004024F.
Name: Val-Mar International, Inc.
Address: 5010 SW. 119th Avenue, Cooper City, FL 33330.
Date Revoked: September 23, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018525N.
Name: Valu Freight Consolidators, Inc.
Address: 1325 NW 21st Street, Miami, FL 33142.
Date Revoked: September 20, 2006.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E6–16397 Filed 10–3–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
015565N	International Equipment Logistics, Inc., 210 E. Essex Avenue, Avenel, NJ 07002..	July 21, 2006.
002279NF	Master Forwarding Network, Inc. dba Transoceanic Container Lines, 3250 Wilshire Blvd., #111, Los Angeles, CA 90010..	September 14, 2006.
004367F	Sumikin International Transport (U.S.A.), dba SITRA, 2180 South Wolf Road, Des Plaines, IL 60018.	July 19, 2006

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E6–16396 Filed 10–3–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Omega Shipping (PL) Inc., 8710 NW 100 Street, Miami, FL 33178, Officers: Yigal Aviani, President (Qualifying Individual), Shimshon Benjamin, Vice President.

MSN Logistics Inc., 3 State Route 27, Suite 104, Edison, NJ 08820, Officers: Mubashar M. Butt, President (Qualifying Individual), Mohammed Sharice, Vice President.

Sino-USA Logistics, Inc., 11570 Wright Road, Lynwood, CA 90262, Officers: Andy King, CFO (Qualifying Individual), Andrew P. Wang, CEO.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Ioplus Logistics LLC, 10300 NW. 19 Street, Suite 104, Doral, FL 33172, Officers: Eduardo Jose Gutierrez, Ocean Manager (Qualifying Individual), Carlos Perez, General Manager.

New Horizon Shipping, Inc., 13 Chandon, Laguna Niguel. CA 92677, Officer: Gihan Zahran, CEO (Qualifying Individual).

Good News Logistics, Inc., 3018 Glendower Way, Roswell, GA 30075, Officers: Keun Kwang Lee, President (Qualifying Individual), Young Mee Lee, Vice President.

Windward Enterprises, Inc. dba International Cargo (West), 5343 W. Imperial Highway, Suite 700, Los Angeles, CA 90045, Officer: Roger Thomas Bernard Sanderson, President (Qualifying Individual).

GTS USA Inc. dba GTS, 580 Division Street, Elizabeth, NJ 07201, Officers: Jean-Francois Gueguen, President (Qualifying Individual), Christian Houart, Chairman.

Ocean Freight Forwarder Ocean Transportation Intermediary Applicants:

Overseas Cargo LLC, 347 Vine Street, Elizabeth, NJ 07202, Officer: Catherine Tello, President (Qualifying Individual).

Gate Way Cargo Systems, Inc., 11222 S. La Cienega Blvd., Suite 408, Inglewood, CA 90304, Officers: Christa Kupferschmidt, President (Qualifying Individual), Dirk Ravensteiner, Vice President.

Keene Machinery and Export, 2810 Goodnight Trail, Corinth, TX 76210, Karon Jones, Sole Proprietor.

Dated: September 29, 2006.

Bryant L. VanBrakle,
Secretary.
[FR Doc. E6–16394 Filed 10–3–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000

Peachtree Street, N.E., Atlanta, Georgia 30309:

1. FNBC Financial Corporation, Crestview, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Crestview, Crestview, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Kleberg & Company Bankers, Inc., Kingsville, Texas, and Kleberg Delaware, Inc., Dover, Delaware; to merge with Brazosport Corporation, Corpus Christi, Texas, and indirectly acquire Brazosport Corporation – Nevada, Inc., Carson City, Nevada, and First Commerce Bank, Corpus Christi, Texas. In addition, Kleberg & Company Bankers, Inc., Kingsville, Texas, and Kleberg Delaware, Inc., Dover, Delaware, have applied to engage in lending activities, pursuant to section 225.28(b)(1) of Regulation Y though the acquisition of an existing company, First Commerce Mortgage Corporation, Corpus Christi, Texas.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Green Bancorp, Inc.; to become a bank holding company by acquiring 100 percent of Redstone Bank, N.A., both of Houston, Texas.

2. Belvedere Texas Holdings, L.P., San Francisco, California; to become a bank holding company by acquiring up to 49 percent of Green Bancorp., Inc., and thereby indirectly acquire Redstone Bank, N.A., both of Houston, Texas.

3. Belvedere Capital Partners II LLC, and Belvedere Capital Fund II L.P., San Francisco, California; to acquire up to 49 percent of Green Bancorp., Inc., and thereby indirectly acquire Redstone Bank, N.A., both of Houston, Texas.

Board of Governors of the Federal Reserve System, September 29, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–16368 Filed 10–3–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, October 10, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 29, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–8498 Filed 9–29–06; 4:33 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new SOR titled "Low Vision Rehabilitation Demonstration (LVRD)," System No. 09–70–0582. The program is mandated by Section 641 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Public Law (Pub. L.) 108–173), enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act (the Act). The LVRD program seeks to establish a new demonstration project to examine Medicare beneficiaries who are diagnosed with moderate to severe visual impairment and who may be eligible to receive covered vision rehabilitating services. Rehabilitation may be conducted under general supervision of a qualified physician in an appropriate setting including in the home of the beneficiary receiving the services. Improvements in these areas are expected to generate savings to the Medicare program to offset the costs of the performance payments.

The primary purpose of the system is to collect and maintain identifiable information on Medicare beneficiaries who participate in Medicare Part B fee-for-service coverage, qualified physicians, such as ophthalmologists or optometrists, qualified occupational therapists, and vision rehabilitation therapists who are certified by the Academy for Certification of Vision Rehabilitation Professionals. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 09/27/2006. In any event, we will not disclose any information under a routine use until 30 days after publication in the **Federal Register** or

40 days after mailings to Congress, whichever is later. We may defer implementation of this system or on one or more of the routine uses listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to the CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Joel Greer, Social Science Research Analyst, Division of Beneficiary Research, Research & Evaluation Group, Office of Research Development and Information, CMS, Mail Stop C3–18–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–6695 or e-mail *joel.greer@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 641 of MMA requires the Secretary of Health and Human Services to carry out a nationwide outpatient vision rehabilitation services demonstration project. Under this LVRD, Medicare will cover vision rehabilitation services for people with a diagnosis of moderate or severe vision impairment including blindness that is not correctable by conventional methods, such as glasses or surgery. Demonstration covered services will only be available to Medicare beneficiaries who live in one of the specified demonstration locales and must be prescribed by a qualified physician, such as an ophthalmologist or an optometrist who also practice in one of the specified demonstration locales.

LVRD locales will include New Hampshire, New York City (all 5 boroughs), Atlanta, GA., North Carolina, Kansas, and Washington State. Eligible beneficiaries who live in these areas and receive their medical eye care from an ophthalmologist or an optometrist who practice in these areas could be covered for up to 9 hours of rehabilitation services provided in an appropriate setting, including in the home. For many with visual impairments, rehabilitation training can help them maintain their independence and quality of life. Rehabilitation can help prevent accidents, like falls and burns that often occur when someone cannot navigate well due to vision loss.

Under LVRD, Medicare will cover vision rehabilitation services for people with a diagnosis of moderate or severe vision impairment including blindness that is not correctable by conventional methods, such as glasses or surgery. Rehabilitation may be conducted under general supervision of a qualified physician in appropriate settings including in the home of the beneficiary receiving the services. Rehabilitation must be prescribed by a qualified physician and administered under an individualized, written plan or care developed by a qualified physician or qualified occupational therapist in private practice (OTPP). The plan of care must contain a specific diagnosis of visual impairment and must assure that vision rehabilitation services are medically necessary and the beneficiary receiving vision rehabilitation is capable of deriving benefit from the rehabilitation. Under the demonstration, services will be covered when provided by a qualified occupational therapist, or by a low vision therapist, orientation and mobility specialist, or vision rehabilitation therapists (aka rehabilitation teachers) who are certified by the Academy for Certification of Vision Rehabilitation Professionals (ACVREP).

Rehabilitation will be judged completed when the treatment goals have been attained and any subsequent services would be for maintenance of a level of functional ability or when the patient has demonstrated no progress on two consecutive visits. All services covered under this demonstration are one-on-one, face to face services. Group services will not be covered.

Some areas of the country provide Medicare coverage for vision rehabilitation services under local coverage decisions (LCDs). LCDs allow Medicare to pay for vision rehabilitation when provided by qualified personnel, such as occupational therapists. LCDs may also allow coverage for vision rehabilitation when provided in the home by a qualified OTPP under general supervision. The LVRD does not supersede LCDs whether services are provided in a demonstration locale, or not. Physicians and other providers who are not practicing in a designated demonstration locale may submit claims for vision rehabilitation as LCD covered therapy services, as before. Physicians and providers who are practicing designated demonstration locale may submit claims as either demonstration-related services or LCD covered therapy services, or both. However, in non-demonstration related services, LCD will not cover services provided by orientation and mobility specialists, low vision therapists, or vision rehabilitation therapists and only OTPP can provide rehabilitation services in the home.

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System

The authority for maintenance of this system is given under the provisions of Section 641 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173), enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act.

B. Collection and Maintenance of Data in the System

The data will be collected and maintained on individual beneficiaries receiving the services and who participate in Medicare Part B fee-for-service coverage, qualified physicians, such as ophthalmologists or optometrists, qualified occupational therapists, and certified low vision therapists, orientation and mobility specialists, and vision rehabilitation therapists (aka rehabilitation teachers) who are certified by the Academy for Certification of Vision Rehabilitation Professionals.

The data collected will consist of, but not limited to, clinical quality measures collected from physicians participating in the demonstration. The collected information will contain provider name, unique provider identification number, unique demonstration practice identification number, beneficiary health insurance claim number (HICN), beneficiary demographic and diagnostic information relevant to the project.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release LVRD information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of LVRD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the

system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect and maintain identifiable information on Medicare beneficiaries who participate in Medicare Part B fee-for-service coverage.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees who have been contracted by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give contractors, consultants, or grantees whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractors, consultants, or grantees from using or disclosing the information for any purpose other than that described in the contract and requires the contractors, consultants, or grantees to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

Other Federal or state agencies in their administration of a Federal health program may require LVRD information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The LVRD data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

5. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

6. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise

combat fraud, waste, or abuse in such programs.

Other agencies may require LVRD information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 Code of Federal Regulation Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the population is so small that one could use this information to deduce the identity of the individual).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system.

Dated: September 19, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NUMBER 09–70–0582

SYSTEM NAME:

• "Low Vision Rehabilitation Demonstration (LVRD)" HHS/CMS/ORDI

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive

SYSTEM LOCATION:

This system is maintained at the Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The data will be collected and maintained on individual beneficiaries receiving the services and who participate in Medicare Part B fee-for-service coverage, qualified physicians, such as ophthalmologists or optometrists, qualified occupational therapists, and certified low vision therapists, orientation and mobility specialists, and vision rehabilitation therapists (aka rehabilitation teachers) who are certified by the Academy for Certification of Vision Rehabilitation Professionals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data collected will consist of, but not limited to, clinical quality measures collected from physicians participating in the demonstration. The collected information will contain provider name, unique provider identification number, unique demonstration practice identification number, beneficiary health insurance claim number (HICN), beneficiary demographic and diagnostic information relevant to the project.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintenance of this system is given under the provisions of Section 641 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173), enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to collect and maintain identifiable information on Medicare beneficiaries who participate in Medicare Part B fee-for-service coverage, qualified physicians, such as ophthalmologists or optometrists, qualified occupational therapists, and vision rehabilitation therapists who are certified by the Academy for Certification of Vision Rehabilitation Professionals. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain health benefits programs.

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

A. ENTITIES WHO MAY RECEIVE DISCLOSURES UNDER ROUTINE USE

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees who have been contracted by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To assist another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

3: To assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Aany employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

6. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. ADDITIONAL PROVISIONS AFFECTING ROUTINE USE DISCLOSURES

This system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 Code of Federal Regulation Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the population is so small that one could use this information to deduce the identity of the individual).

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

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

Information collected will be retrieved by the name or other identifying information of the participating provider, and may also be retrievable by HICN at the individual beneficiary record level.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. Office of Management and Budget Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable information maintained in the LVRD system of records for a period of 6 years. Data residing with the designated claims payment contractor shall be returned to CMS at the end of the project, with all data then being the responsibility of CMS for adequate storage and security. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Research and Evaluation Group, Office of Research Development and Information, CMS, 7500 Security Boulevard, Mail stop C3–18–07, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name, provider identification number, and the patient's medical record number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Information maintained in this system will be collected from physicians volunteering to participate in the LVRD Demonstration. Additional data will be collected from Medicare claims payment records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–16329 Filed 10–3–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families.

ACTION: Single-Source Non-Competitive Continuation Award.

CFDA Number: 93.557.

Legislative Authority: Public Law (Pub. L.) 108–96, Runaway, Homeless, and Missing Children Protection Act of 2003.

Amount of Award: $100,000 for one year.

Project Period: 09/30/2006—09/29/2007.

This notice announces the award of a single-source non-competitive continuation grant to the Fairbanks Counseling and Adoption (FCA) to complete the third and final year of a grant awarded originally to the Fairbanks Native Association (FNA). FCA was awarded a one-year non-competitive successor grant to provide street outreach services when this grant was relinquished by Fairbanks Native Association (FNA) in Fiscal Year 2005.

FNA, a nonprofit agency in Fairbanks, AK, was awarded a Street Outreach grant in Fiscal Year 2004. Since FNA was no longer able to effectively administer the grant or accomplish the project goals, the organization relinquished the grant effective July 1, 2005. On September 14, 2005, FCA was awarded a single-source successor grant to replace FNA as grantee. FCA is a leader in assessing the needs and benefits of positive youth development in Fairbanks, Alaska. There was very little disruption of activities during the transfer of the grant. Continuation of these activities in central Alaska by an entity that already supports homeless youth is the best option for a successful completion of the project. The need for these street outreach services still exists as it did when the grant was originally awarded in the year 2004. There will be no significant change in project activities.

For Further Information Contact: Curtis Porter, Director, Youth Development Division, Family and Youth Services Bureau, Administration for Children, Youth and Families, Administration for Children and Families, Portals Building, Suite 800, 1250 Maryland Avenue, SW., Washington, DC 20024. Telephone: 202–205–8102.

Dated: September 27, 2006.

Joan E. Ohl,

Commissioner, Administration on Youth and Families.

[FR Doc. E6–16360 Filed 10–3–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families Children's Bureau

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families.

ACTION: Single-Source Program Expansion Supplement.

CFDA: 93.670.

Legislative Authority: Title II Child Abuse Prevention and Treatment Act [42 U.S.C. 5116 *et seq.*]

Amount of Award: $250,000 for one year.

Project Period: 9/30/2006–9/29/2007.

Justification for the supplement: The program expansion supplement will increase the capacity of the FRIENDS National Resource Center for Community-Based Child Abuse Prevention (CBCAP) to provide training and technical assistance to State formula grantees.

Contact for Further Information: Melissa Lim Brodowski, Children's Bureau, Portals Building, Suite 8127, 1250 Maryland Avenue, SW., Washington, DC 20024.

Telephone Number: (202) 205–2629.

Dated: September 27, 2006.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. E6–16361 Filed 10–3–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Developmental Disabilities

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families.

ACTION: Single-Source Non-Competitive Continuation Award.

CFDA Number: 93.632.

Legislative Authority: Public Law (Pub. L.) 106–402, Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Amount of Award: $60,000 for one year.

Project Period: September 30, 2006—September 29, 2007.

This notice announces the award of a single-source non-competition continuation award to the Human Development Center, Louisiana State University to supplement grant award 90DD0583 to fund a project that would address the needs of individuals with developmental disabilities affected by Hurricane Katrina.

This proposed project falls under the community services core function of the University Centers for Excellence in Developmental Disabilities, Research and Services (UCEDD) program. The project proposes to address the needs of an underserved and unserved

population in Louisiana: people with developmental disabilities affected by Hurricane Katrina.

The proposed project will have numerous benefits on the lives of individuals with developmental disabilities. Before Hurricane Katrina, many individual with developmental disabilities in Louisiana lived in institutions where they were directly cared for by personal care attendants. Following the Hurricane, Institutions are being closed and the former residents will be living in the community. As a result these people will now be responsible for their personal care, which will be a completely new task for them. Projects are needed to develop training materials that will help these individuals learn to live in the community and care for themselves.

The proposed project will conduct activities that will inform the sound design of future physical activity and healthy eating interventions for individuals with developmental disabilities receiving supported independent living services in the Greater New Orleans area. The insights gained from the proposed project will be critical to the development of high-quality, tailored health promotion programs to increase physical activity and health eating among persons with ID in order to enhance their health, well-being, and independent participation in society. It is anticipated that the project results will inform future activities to promote physical activity and health eating among individuals with developmental disabilities.

There would be detrimental consequences without this funding. Without funding, the project would not be able to conduct the necessary activities that will enhance the ability of individuals with developmental disabilities to achieve full independence, productivity, integration, and inclusion in society. Health promotion interventions to increase physical activity and promote health eating have the potential to enhance function, prevent chronic conditions, and increase quality of life in person with developmental disabilities.

FOR FURTHER INFORMATION CONTACT: Jennifer Johnson, Administration on Developmental Disabilities, Administration for Children and Families, U.S. Department of Health and Human Services, 370 L'Enfant Promenade, SW., MAIL STOP: Humphrey Building, 405D,Washington, DC 20447. Telephone: 202–690–5982.

Dated: September 27, 2006.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. E6–16356 Filed 10–3–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Developmental Disabilities

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families.

ACTION: Single-Source Non-Competitive Continuation Award.

CFDA Number: 93.632.

Legislative Authority: Public Law (Pub. L.) 106–402, Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Amount of Award: $60,000 for one year.

Project Period: September 30, 2006–September 29, 2007.

This notice announces the award of a single-source non-competition continuation award to the Mississippi Institute for Disability Studies, University of Southern Mississippi (the Institute) to address the needs of underserved and unserved individuals affected by Hurricane Katrina.

Lessons learned from Hurricane Katrina reflected that there was insufficient capacity in relief efforts to address the needs of individuals with developmental disabilities during and following the hurricane. With this award this Institute, which currently has a grant from the Administration on Developmental Disabilities (ADD) to operate a University Center for Excellence in Developmental Disabilities, Research and Services (UCEDD), will expand its mission to develop and conduct the necessary training program to produce a cadre of case managers with expertise in working within the complex service system serving people with developmental disabilities, which has been expanded to include agencies such as FEMA.

The proposed project will have numerous benefits on the lives of individuals with developmental disabilities affected by Hurricane Katrina. Individuals with developmental disabilities were the most vulnerable during the response/evacuation period and they are the most vulnerable during the stages of recovery and rebuilding. The service infrastructure for individuals with developmental disabilities was significantly disrupted and many people lost key supports, such as assistive devices, service animals, and public communication systems. Moreover, the Hurricane had a devastating impact on the mental health of disaster victims with developmental disabilities, which is further compromised by a lack of mental health services following the storm.

As people with developmental disabilities and communities as a whole tried to recover from these factors caused by Hurricane Katrina, case managers from various agencies or organizations emerged to assist in the recovery process. Because in many affected areas, especially along the coastal areas, it will be a long time before life is as it once was, trained case managers who understand the special needs of people with developmental disabilities who are victims of disaster will be needed on a long-term basis.

For Further Information Contact: Jennifer Johnson, Administration on Developmental Disabilities, Administration for Children and Families, U.S. Department of Health and Human Services, 370 L'Enfant Promenade, SW., MAIL STOP: Humphrey Building, 405D,Washington, DC 20447. Telephone: 202–690–5982.

Dated: September 27, 2006.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. E6–16358 Filed 10–3–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families.

ACTION: Single-Source Non-Competitive Continuation Award.

CFDA Number: 93.623.

Legislative Authority: Public Law (Pub. L.) 108–96, Runaway, Homeless, and Missing Children Protection Act of 2003.

Amount of Award: $124,000 for one year.

Project Period: September 30, 2006–September 29, 2007.

This notice announces the award of a single-source non-competition continuation award to the Presbyterian Hospitality House (PHH) to complete the third and final year of a grant that was awarded originally in Fiscal Year 2004 to the Fairbanks Native Association (FNA). Continuation funds that were allocated for this three-year grant are now relinquished by FNA.

On September 20, 2005, PHH was awarded a one-year non-competitive successor grant to replace FNA as the grantee. PHH is a leader in assessing the need and benefits of positive youth development in Fairbanks, Alaska. There was very little disruption of activities during the transfer of the grant. Continuation of these activities in central Alaska by an entity that already supports homeless youth is the best option for successful completion of the project.

The need for this Basic Center still exists as it did when the grant was originally awarded in the Fiscal Year 2004. There will be no significant change in project activities. There is no new funding available for Basic Center program in the State of Alaska for FY 2007.

For Further Information Contact: Curtis Porter, Director, Youth Development Division, Family and Youth Services Bureau, Administration for Children, Youth and Families, Administration for Children and Families, Portals Building, Suite 800, 1250 Maryland Avenue, SW., Washington, DC 20024. Telephone: 202–205–8102.

Dated: September 27, 2006.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. E6–16369 Filed 10–3–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families Administration on Developmental Disabilities

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families.

ACTION: Single-Source Non-Competitive Continuation Award.

CFDA Number: 93.632.

Legislative Authority: Public Law (Pub. L.) 106–402, Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Amount of Award: $60,000 for one year.

Project Period: 09/30/2006—09/29/2007.

This notice announces the award of a single-source non-competition continuation award to the Texas Center for Disability Studies, University of Texas, Austin (the Center) to address the needs of underserved and unserved individuals affected by Hurricane Katrina.

Lessons learned from Hurricane Katrina reflected that there was insufficient capacity in relief efforts to address the needs of individuals with developmental disabilities during and following the hurricane. With this award this Center, which currently has a grant from the Administration on Developmental Disabilities (ADD) to operate a University Center for Excellence in Developmental Disabilities (UCEDD), will expand its mission to address gaps in the Texas disaster relief efforts and the subsequent services to people with developmental disabilities. This proposed project is consistent with the Developmental Disabilities Assistance and Bill of Rights Act, which among other provisions, requires that UCEDDs assist underserved and unserved populations of individuals with developmental disabilities and their families through community outreach, capacity building, and systems change.

The proposed project will develop and conduct training around Texas that will increase emergency preparedness by creating a pool of disaster response systems navigators ready and able to assist individuals with developmental disabilities and their families in a disaster. The navigators will be trained to navigate both State and local health and human service systems in order to quickly identify and access services for the targeted individuals. The navigator model proposed could easily be adapted by other States to improve their emergency readiness as well.

The outcomes of this project will strengthen Texas' ability to respond to the needs of individuals with developmental disabilities in the event of a disaster by:

1. Expanding awareness of the needs of individuals with developmental disabilities in the event of a disaster.

2. Expanding the pool of volunteer disaster response navigators for individuals with developmental disabilities.

3. Creating a data base of these navigators for the Red Cross, so that these navigators may be mobilized with other first response teams.

4. Expanding the State's disaster relief plan to include the emergency services and supports needed by individuals with developmental disabilities.

For Further Information Contact: Jennifer Johnson, Administration on Developmental Disabilities, Administration for Children and Families, U.S. Department of Health and Human Services, 370 L'Enfant Promenade, SW., MAIL STOP: Humphrey Building, 405D, Washington, DC 20447. Telephone: 202–690–5982.

Dated: September 27, 2006.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. E6–16355 Filed 10–3–06; 8:45 am]

BILLING CODE 4184–01–P

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: October 24, 2006, 1 p.m.–5 p.m., EST.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Tuesday, October 24, from 1 p.m. to 5 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–888–373–3590 on October 24 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the October meeting will include, but are not limited to: A presentation on vaccine safety activities of the Centers for Disease Control and Prevention . (CDC) and petitioners' attorneys views of the National Vaccine Injury Compensation Program; discussion of extending the statute of limitations, forfeiting claims and suggested modification to the Vaccine Injury Table's Qualifications and Aids to Interpretation; and updates from Division of Vaccine Injury Compensation, Department of Justice, National Vaccine Program Office, Immunization Safety Office (CDC), National Institute of Allergy and

Infectious Diseases (National Institutes of Health), and Center for Biologics and Evaluation 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: Ms. Cheryl Lee, Principal Staff Liaison, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *clee@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 Ms. Cheryl Lee, Principal Staff Liaison, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–2124 or e-mail: *clee@hrsa.gov*.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–16371 Filed 10–3–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1661–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1661–DR), dated September 22, 2006, and related determinations.

Effective Date: September 22, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 22, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows: I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from severe storms and flooding, including severe storms and flooding associated with Tropical Depression Ernesto, during the period of August 29 to September 7, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Gracia Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster: Accomack, Caroline, Charles City, Dinwiddie, Essex, Gloucester, Isle of Wight, James City, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, Surry, Sussex, Westmoreland, and York Counties and the independent cities of Poquoson and Richmond for Public Assistance.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–16335 Filed 10–3–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Record of Decision (Rod) for a Proposed Lease of Tribal Trust Lands Between Private Fuel Storage, L.L.C. (PFS) and Skull Valley Band of Goshute Indian (Band) in Tooele County, UT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Indian Affairs (BIA) has signed the Record of Decision (ROD) that disapproves a proposed lease of tribal trust lands between Private Fuel Storage, L.L.C. (PFS) and the Skull Valley Band of Goshute Indians. BIA analyzed the environmental impacts of the proposed lease under the National Environmental Policy Act (NEPA) and issued a draft environmental impact statement (EIS) in June 2000, and the final EIS (FEIS) in December 2001. The BIA decision is based on review of the draft EIS; the FEIS; comments received from the public, other Federal agencies, and State and local governments; consideration of the required factors under the Indian Long-term Leasing Act and implementing regulation; and discussion of all the alternatives with the cooperating agencies.

FOR FURTHER INFORMATION CONTACT: Arch Wells; Deputy Director, Office of Trust Services, Bureau of Indian Affairs; 1849 C St. NW.; Washington, DC 20240; Telephone (202) 208–7513.

ADDRESSES: Copies of the Record of Decision are available from Arch Wells; Office of Trust Services; Bureau of Indian Affairs; 1849 C St. NW.; Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Skull Valley Bank of Goshute Indians is a federal recognized Tribe with 125 enrolled members. The Band's reservation consists of 18,540 acres in Tooele County, Utah, about 70 miles West of Salt Lake City. Approximately 30 Band members live on the reservation.

The proposed lease would have allowed for the operation of an Independent Spent Fuel Storage Installation (ISFSI) on tribal lands. Spent nuclear fuel (SNF) consists mainly of intact fuel rods removed from a nuclear reactor. The rods contain pellets of uranium, each about the size of a pencil eraser, that are the source of heat inside a reactor vessel. When removed from reactors, the uranium pellets stay in the fuel rods, which remain highly radioactive and must be stored in specially constructed pools of water ("wet storage") or in specially designed containers cooled by natural airflow ("dry storage") until the radioactivity decreases to safer levels, a process that can take thousands of years.

The proposed ISFSI at the Goshute Reservation would have been the first large, away from point-of-generation repository of its type to be licensed by the Nuclear Regulatory Commission (NRC). The ISFSI would have been operated by PFS, a private, non-governmental entity composed of eight NRC-licensed nuclear power generators.

BIA was required to by law to consider environmental issues concerning the proposed lease. The decision to disapprove the proposed lease is the result of concern over environmental impacts associated with the proposal. The Record of Decision contains the details of BIA's decision and the reasons for it. To obtain a copy of the Record of Decision, send a request to the address given in the **ADDRESSES** section of this notice.

Dated: September 7, 2006.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. 06–8484Filed 10–3–06; 8:45 am]

BILLING CODE 4310–W7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–XX]

Emergency Closure of Red Mountain Road on BLM-managed public lands near Piercy, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure of Red Mountain Road due to danger from wildfire.

SUMMARY: Notice is hereby given that Red Mountain Road, located on public land managed by the Bureau of Land Management approximately eight miles east of Piercy, California, is closed to public access due to dangers posed by the Nobles Fire. Exempted from this closure are vehicles and personnel involved with fighting the Nobles Fire, federal, state and local officers involved in the enforcement of their duties, and Red Mountain Road area residents who show valid identification. This closure is necessary to protect public health and safety.

SUPPLEMENTARY INFORMATION: The closure begins at the junction of Red Mountain Road and U. S. Highway 101 at T24N, R17E, NE corner of Section 7, and continues through the fire area. This closure is made under the authority of 43 CFR 8364. Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7.

EFFECTIVE DATE: The closure is in effect with posting of this notice and remains in effect until the authorized officer determines that the fire no longer poses a public safety risk.

FOR FURTHER INFORMATION CONTACT: BLM Arcata Field Manager Lynda J. Roush, 707–825–2300 or by e-mail at *lynda_roush@ca.blm.gov*; or Tim Jones, fire management officer, 707–825–2300, or by e-mail at *timothy_jones@ca.blm.gov.*

Dated: September 21, 2006.

Joseph J. Fontana,

Public Affairs Officer, BLM Northern California.

[FR Doc. E6–16336 Filed 10–3–06; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Second Review)]

Ferrovanadium and Nitrided Vanadium From Russia

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on May 1, 2006 (71 FR 25609) and determined on August 4, 2006 that it would conduct an expedited review (71 FR 47523, August 17, 2006).

The Commission transmitted its determination in this review to the Secretary of Commerce on September 28, 2006. The views of the Commission are contained in USITC Publication 3887 (September 2006), entitled *Ferrovanadium and Nitrided Vanadium from Russia: Investigation No. 731–TA–702 (Second Review).*

By order of the Commission.

Issued: September 28, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–16384 Filed 10–3–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Second Review)]

Fresh Garlic From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 1, 2006 (71 FR 5374) and determined on May 8, 2006 that it would conduct an expedited review (71 FR 29352, May 22, 2006). Notice of the scheduling of the Commission's review was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 22, 2006 (71 FR 29352).

The Commission is scheduled to transmit its determination in this review to the Secretary of Commerce on September 28, 2006. The views of the Commission are contained in USITC Publication 3886 (September 2006), entitled *Fresh Garlic From China (Inv. No. 731–TA–683 (Second Review))*.

By order of the Commission.

Issued: September 28, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–16383 Filed 10–3–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Oil Pollution Act

Notice is hereby given that on September 22, 2006, a proposed consent decree in *United States* v. *Nacelle Land & Management Corporation, et al.*, Civ. No. 1:04–cv–201 was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States seeks, pursuant to the Oil Pollution Act, recoupment of the costs incurred by the U.S. Environmental Protection Agency ("U.S. EPA") in conducting oil response actions at Nacelle Land & Management Corporation's oil and brine separation facility located at 675 Lakeshore Blvd., Painesville Township, Lake County, Ohio ("Nacelle Facility"). The complaint also seeks civil penalties for alleged violations of the Clean Water Act and its pertinent regulations at the Nacelle Facility. Specifically, in its Complaint, the United States, on behalf of the Oil Spill Liability Trust Fund ("OSLTF"), and its administrator, the U.S. Coast Guard, seeks, pursuant to the Oil Pollution Act (OPA), 33 U.S.C. 2701, *et seq.*, to recover all unreimbursed oil removal costs, including interest under OPA Section 1005, 33 U.S.C. 2705, prejudgment interest, administrative and adjudicative costs, and attorney's fees, totaling at least $2,274,337.59, incurred by the United States, and/or expended by the OSLTF, in responding to the discharge and/or substantial threat of discharge of oil at and from Nacelle's the Nacelle Facility. The Complaint also seeks, on behalf of U.S. EPA, civil penalties pursuant to CWA Section 311, 33 U.S.C. 1321(b)(7), from Defendants Nacelle and Lake Underground for discharges of oil and brine into navigable waters of the United States at or adjacent to the Nacelle Facility, and for the failure of Nacelle and Lake Underground to prepare and implement an oil spill prevention control and countermeasures program at the Nacelle Facility.

Under the proposed Consent Decree, the United States would recover a total of $300,000 (determined by a Department of Justice financial analyst to be the amount that the corporations can pay) as well as a portion of the proceeds of any sale or lease of certain properties owned by the companies. Of the $300,000 to be recovered, $200,000 would be paid to the OSLTF in satisfaction of the United States' claim for reimbursement of removal costs, and $100,000 would be paid to the OSLTF in full settlement of the United States' claim for civil penalties under CWA Section 311, 33 U.S.C. 1321. A percentage of the proceeds from the sale or lease of properties owned by the corporations also would be paid into the OSLTF.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Nacelle Land & Management Corp., et al.* D. J. Ref. 90–5–1–1–4365.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Ohio, 801 West Superior Avenue Suite 400, Cleveland, OH 44113 (contact Asst. U.S. Attorney Steven Paffilas (216–622–3698)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Deirdre Tanaka (312–886–6730)). During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8483 Filed 10–03–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration Advisory Council on Employee Welfare and Pension Benefit Plans Working Group on Plan Asset Rules, Exemptions and Cross Trading, Working Group on a Procedurally Prudent Investment Process, and Working Group on Health Information Technology; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Groups assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issues of (1) Plan asset rules, exemptions and cross trading, (2) a procedurally prudent investment process, and (3) health information technology, will hold public teleconference meetings on October 20, 2006.

The sessions will take place in Room N4437–A, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meetings is for each Working Group to discuss its report/recommendations for the Secretary of Labor. The meetings will run from 11 a.m. to approximately 5 p.m., starting with the Working Group on Plan Asset Rules, Exemptions and Cross Trading, followed by the Working Group on a Procedurally Prudent Investment Process, followed by the Working Group on Health Information Technology.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do

so by submitting 25 copies on or before October 13, 2006 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov*. Statements received on or before October 13, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 13 at the address indicated.

Signed at Washington, DC, this 27th day of September, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–16381 Filed 10–3–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,990]

Ademco; a Division of Honeywell Security and Custom Electronics; a Subsidiary of Honeywell International, Inc. Syosset, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 19, 2006, applicable to workers of Honeywell International, Inc., Honeywell Security and Custom Electronics, Syosset, New York. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of alarm device equipment.

New findings show that there was a previous certification, TA–W–53,773, issued on January 6, 2004, for workers of Ademco, a division of Honeywell Security and Custom Electronics, a subsidiary of Honeywell International, Inc., Syosset, New York who were engaged in employment related to the production of alarm device equipment. That certification expires January 6, 2006. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from August 30, 2005 to January 7, 2006, for workers of the subject firm.

The amended notice applicable to TA–W–59,990 is hereby issued as follows:

All workers of Ademco a division of Honeywell Security and Custom Electronics, a subsidiary of Honeywell International, Inc., Syosset, New York, who became totally or partially separated from employment on or after January 7, 2006, through September 19, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of September 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16353 Filed 10–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,107]

Saint-Gobain Performance Plastics Corporation, Mundelein, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 20, 2006 in response to a petition filed by a company official on behalf of workers at Saint-Gobain Performance Plastics Corporation, Mundelein, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of September 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16349 Filed 10–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,465]

Saint Gobain Crystals, Solon, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 7, 2006, the International Chemical Workers Union Council, Local 852C, (Union), requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The Department's determination was issued on June 7, 2006. The Department's Notice of determination was published in the **Federal Register** on July 14, 2006 (71 FR 40160).

In the request for reconsideration, the Union alleges that the Department's initial investigation did not include all of the articles produced at the subject firm. The determination states that the subject worker group produces calcium fluoride crystals.

The petition (dated May 24, 2006) filed by the Union on behalf of workers at the subject firm states that the subject facility produces "crystals, crystal products."

The Department has carefully reviewed the Union's request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of August 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16350 Filed 10–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,952]

Schott North America, Inc.; Duryea, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 25, 2006 in response to a petition filed by a United Food and Commercial Workers, Local 1776 Representative and a company official on behalf of workers at Schott North America, Inc., Duryea, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of September, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16352 Filed 10–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,950]

Stanley-Bostitch, Inc., a Division of Stanley Works Inc., Including On-Site Leased Workers From Admiral Staffing Solutions, Clinton, CT; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance as a secondarily affected worker group.

In order to make an affirmative determination and issue a certification of eligibility for secondary workers to apply for Trade Adjustment Assistance, the group eligibility requirements of paragraph (b) of Section 222 of the Trade Act, as amended, must be met. It is determined in this case that the requirements of (b) of Section 222, as amended, have been met.

The investigation was initiated on August 24, 2006 in response to a petition filed by a state agency representative on behalf of workers of Stanley-Bostitch, Inc., a division of Stanley Works, Inc., including on-site leased workers of Admiral Staffing Solutions, Clinton, Connecticut. The workers produce wire drawing used in staples, pins, and other fastening devices.

The investigation revealed a significant number or proportion of workers at the subject facility are threatened to become separated from employment.

The investigation also revealed that the Clinton, Connecticut plant produced wire drawing used as a component by a manufacturer whose workers were certified eligible to apply for adjustment assistance. At least 20 percent of the production or sales of the subject firm went to this manufacturer.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Stanley-Bostitch, Inc., a division of Stanley Works Inc., including on-site leased workers of Admiral Staffing Solutions, Clinton, Connecticut qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

"All workers of Stanley-Bostitch, Inc., a division of Stanley Works Inc., including on-site leased workers of Admiral Staffing Solutions, Clinton, Connecticut who became totally or partially separated from employment on or after August 23, 2005, through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed in Washington, DC, this 14th day of September 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16351 Filed 10–3–06; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company, *et al.* (the licensee), to withdraw portions of its April 21, 2005, application for proposed amendments to Facility Operating License Nos. DPR–67 and NPF–16 for St. Lucie Units 1 and 2, respectively, located in St. Lucie County, Florida.

The portions of the proposed amendments would have revised the Technical Specifications (TSs) to adopt certain provisions of the Combustion Engineering Standard TSs regarding remote shutdown and postaccident monitoring instrumentation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 5, 2005 (70 FR 38720). However, by letter dated September 27, 2006, the licensee withdrew portions of the proposed amendments.

For further details with respect to this action, see the application for amendment dated April 21, 2005, and the licensee's letter dated September 27, 2006, which withdrew portions of the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of September 2006.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–16359 Filed 10–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power & Light Company; Turkey Point Nuclear Plant, Units 3 and 4 Exemption

1.0 Background

The Florida Power & Light Company (FPL, the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41, which authorize operation of the Turkey Point Nuclear Plant, Units 3 and 4. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Miami-Dade County, approximately 25 miles south of Miami, Florida.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix R, Subsection III.G.3 addresses fire protection features for assuring alternative or dedicated shutdown capability in the event of a fire, and requires that fire detection and a fixed fire suppression system be installed in the area, room, or zone where equipment or components are relied on for the assured shutdown capability. FPL requests exemption from the requirements of Subsection III.G.3 of 10 CFR 50, Appendix R, for fixed suppression in the Mechanical Equipment Room and for detection and fixed suppression on the Control Room Roof, at Turkey Point, Units 3 and 4, on the basis that the existing fire barriers at Turkey Point, together with fire protection measures, low combustible loading, and administrative controls in place, satisfy the underlying intent of 10 CFR 50, Appendix R, Subsection III.G.3.

In summary, by letter dated December 27, 2004, as supplemented May 23, 2005, January 13, 2006, and July 12, 2006, FPL requests exemption from the requirements of 10 CFR 50, Appendix R, Subsection III.G.3, for fixed suppression in the Mechanical Equipment Room and for detection and fixed suppression on the Control Room Roof, at Turkey Point, Units 3 and 4.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present.

The underlying purpose of Subsection III.G.3 of 10 CFR 50, Appendix R is to require alternative or dedicated shutdown capability where (a) fire protection of systems necessary for hot shutdown does not meet Subsection III.G.2, or (b) redundant trains of systems necessary for hot shutdown are located in the same fire area and may be subject to damage from fire suppression activities or systems. In addition, III.G.3 requires fire detection and a fixed fire suppression system in the area, room, or zone under consideration.

The staff examined information supplied by the licensee in support of the exemption request and concluded that special circumstances exist in that, with the installation of the fire detection system in the Mechanical Equipment Room proposed by the licensee, the existing fire protection features in and accessible for the specific fire zones (FZs) referenced for Turkey Point Units 3 and 4, and the administrative controls for combustibles, the facility meets the underlying purpose of 10 CFR 50, Appendix R, Subsection III.G.3. The following evaluation provides the basis for this conclusion.

3.1 Background

The NRC approved the alternate shutdown capability proposed by the licensee for Turkey Point, Units 3 and 4, for compliance with the requirements of III.G.3, in a safety evaluation dated April 16, 1984. At that time, the licensee identified three fire areas that could be subject to the condition specified in III.G.3.b, which states, "(w)here redundant trains of systems required for hot shutdown located in the same fire area may be subject to damage from fire suppression activities * * *, fire detection and a fixed fire suppression system shall be installed in the area, room, or zone under consideration." The three affected fire areas were the Control Room, Cable Spreading Room, and North-South Breezeway. To resolve these vulnerabilities, the licensee proposed plant modifications and procedure revisions that the staff found acceptable for compliance with III.G.3.

However, in February 2004, during an NRC triennial fire inspection at Turkey Point, the inspection team reviewed fire protection systems, features, and equipment, and found that all FZs supporting the alternate safe shutdown function for the Control Room (Fire Area MM) do not provide full area fire detection and a fixed suppression system in accordance with the requirements of III.G.3, quoted above, for both reactor units. Specifically, the Mechanical Equipment Room, the Main Control Room, and Control Room Roof are identified in the plant fire protection program report as alternative safe shutdown areas for, and thereby part of, the Control Room. However, the Mechanical Equipment Room does not have full area detection and fixed suppression.

In response to this inspection finding, the licensee declared the detection and suppression inoperable for the Mechanical Equipment Room (and the Control Room Roof, which also fails to provide detection and fixed suppression) and established an hourly fire watch. An exemption from these detection and suppression requirements is now requested for the Control Room Roof, and an exemption from suppression requirements is requested for the Mechanical Equipment Room. The licensee proposes installation of area detection in the Mechanical Equipment Room.

3.2 Existing Fire Protection Features

Fire Area MM is the Unit 3 and 4 Control Room, located at the 42-foot elevation level of the plant. It is a multiple zone area consisting of FZs 106 (the Main Control Room), 106R (the Control Room Roof), and 97 (the Mechanical Equipment Room). FZs 97 and 106R contain redundant trains of air-conditioning equipment that support the habitability and operability of Fire Area MM. The licensee's fire protection program report identifies FZs 97, 106, and 106R as the alternative shutdown capability for Fire Area MM. FZ 106R is located outdoors at the plant's 58-foot elevation on the control building roof. The flooring is tar and gravel on a concrete base, occupying a section of the roof with an area of approximately 640 square feet. Three heating, ventilating, and air conditioning (HVAC) condensing units for the control room are located here. The licensee's submittal states that motors, cable and

raceway protection, and tar material make up its in situ [1] combustible load.

The licensee states that redundant safe shutdown components and circuits in this zone are protected by at least 10 feet of separation or by 25-minute rated Thermo-Lag fire barrier. This is in conformance with an exemption from separation and protection requirements for the control room roof, which the NRC granted on May 4, 1999. The licensee's submittal states that the proposed exemption request does not supersede the exemption from separation and protection requirements granted by the NRC in May 1999.

The submittal describes the suppression capability for this zone as consisting of three portable fire extinguishers located near the roof access stairs at the 42-foot elevation on the turbine deck, with an additional three extinguishers located at the 30-foot elevation on the mezzanine level. In addition, a hose station with 75 feet of hose is located on the turbine deck near the roof access stairs and a hose station with 100 feet of hose is located at the mezzanine level near the stairway. The hose in this building is 1.5 inches (minimum), with 1.5 inch (minimum) electrically-safe fog nozzles, and threading compatible with that used by local fire departments. No area detection is provided in FZ 106R.

FZ 97 is an enclosed room located adjacent to the Cable Spreading Room at the 30-foot elevation, just below the Main Control Room. It has 377 square feet of floor area and houses the safety-related emergency recirculating filter unit and the air handling supply fans for the main control room. The licensee's submittal identifies cable insulation, charcoal, and motors as the in situ combustible loading for this zone. The walls, floor, and ceiling are concrete block or reinforced concrete, providing 3-hour rated fire barrier protection.

An ionization smoke detector is installed in FZ 97 inside the air-handling exhaust downstream of the motors and charcoal filter. If actuated, the detector initiates an alarm in the Control Room to alert operators to summon the fire brigade to respond with manual (not fixed) fire suppression. No full area detection is provided in FZ 97. No fixed suppression is provided.

The submittal identifies nearby suppression capabilities for this zone consisting of four portable fire extinguishers located at the 30-foot elevation on the mezzanine level. In addition, a hose station is located on the mezzanine level outside the cable spreading room with 100 feet of hose. Area detection and a Halon suppression system are also provided in the cable spreading room adjacent to FZ 97.

3.3 Evaluation

The 2001 fire hazards analysis (FHA) in the Turkey Point Fire Protection Program Report describes each fire area, including details (i.e., listings of essential equipment, combustible loadings, fire boundaries and barriers, detection capability, suppression systems, and venting capability) for each FZ in the fire area. The NRC staff reviewed these details for FZs 106R and 97 to determine what fire protection features were relied on to assure the defense-in-depth elements of adequate fire suppression and detection. In situ combustible loading must be considered in determining the level of suppression and detection needed. The staff's evaluation of in situ combustible loadings for each FZ is discussed below.

For transient combustibles, Turkey Point has implemented administrative controls through programs and procedures such as the Transient Combustible Permit Program and designated Transient Combustible Control Areas. Associated procedures include such controls as visual posting of transient fire loads, labeling of storage containers, and required attendance while certain types of combustibles are located in the specific FZ. During plant activities, these controls also ensure that restrictions are placed on fire loading added and/or that appropriate fire suppression is available during temporary increases in combustible loading. They also control the location and duration of hot work. These administrative controls for the transport and storage of combustible material apply throughout the plant, including FZs 106R and 97, and are based on the in situ combustible load and ignition sources in the zone (identified in the FHA), the types and amounts of combustibles introduced into the area, how the transient combustibles are stored, and on the potential for spillage (which is minimized by procedure).

3.3.1 FZ 106R—Control Room Roof

The safe shutdown equipment in this FZ consists of three HVAC condensing units for the control room. Fire protection features include an absence of significant fire loading, separation and fire barriers to protect redundant trains of equipment, nearby suppression capabilities, and an open air configuration.

The in situ combustible load for this zone is identified in the licensee's submittal as motors, cable and raceway protection, and tar and gravel roofing materials. However, the staff found that the FHA list of in situ combustibles for this FZ (on page 9.6A–230 (Rev. 8) of the Updated Final Safety Analysis Report (UFSAR)) excludes the tar roofing material. Therefore, as stated in its July 12, 2006, letter, the licensee intends to revise this page of the FHA to include the combustible tar material in the list of combustibles. In addition, the licensee estimated the potential heat load contribution from the tar material, using the specific heat value for petroleum-based materials (*i.e.*, 20,000 British Thermal Units (BTU) per pound), as 52,000 BTU per square foot. The FHA considers a significant combustible load for outdoor areas to be greater than the equivalent of 200 gallons of combustible liquid, or 68 million BTU. Therefore, with approximately 640 square feet of floor area in this zone, the revised heat load estimate would be 34 million BTU, which is not a significant combustible load. However, since it is not a negligible quantity, the FHA heat load characterization for this FZ on UFSAR page 9.6A–230 will also be revised accordingly. This revision to the FHA will not significantly affect the results of the FHA, but will provide completeness and consistency with the description in the licensee's submittal. The FHA page revisions will be handled under the licensee's normal process for UFSAR updates. The licensee's evaluation and supporting calculations confirmed the staff's expectation that the roofing material is not a significant fire load. This, together with the licensee's actions to include the roofing material in the FHA, resolved the staff's concern.

The licensee's December 27, 2004, submittal states that "redundant safe shutdown components and circuits are protected by at least 10 feet of separation or by 25-minute Thermo-Lag fire rated barrier" for FZ 106R. The licensee further states that "this exemption request does not supersede the exemption from separation and protection requirements granted by the NRC in May 4, 1999." These issues refer to an earlier review of an exemption request for this FZ which relates to this review.

In 1998, the staff denied the licensee's exemption request for FZ 106R from the requirements of III.G.2.a, based on the uncertainty of the combustibility and fire classification of the roof. In 1999, the staff granted the licensee an exemption for FZ 106R from the requirements of III.G.2.a, based on

[1] Fixed in place as part of the construction, fabrication, or installation of a plant structure, system, or component.

raceway protection and separation consistent with that described in Section 3.2 above. Also, based on the licensee's evaluation of the construction of the roof flooring composite (*e.g.*, the type and amount of tar material used, the specifications of gravel applied over the tar material to improve its fire protection performance, and its similarity to other Class A [2] roofing configurations), the staff concluded there was reasonable assurance that the level of fire safety provided by the roof is equivalent to a Class A design.

The licensee now seeks an exemption from III.G.3 for this FZ since it functions as a component of Fire Area MM, which provides an alternate shutdown capability in accordance with III.G.3. The staff's conclusion in 1999 was based on the licensee's comparative evaluation and the existing separation and protection configuration. However, the exemption request currently under review applies to III.G.3, which does not impose separation and protection requirements for safety-related equipment in the area.

Because the composite tar and gravel flooring in FZ 106R was not tested by the Underwriters Laboratories (UL) and, therefore, is not listed by UL, and the licensee has performed no separate combustible loading analysis on this unique flooring, the licensee's comparative evaluation in 1999 requires the additional defense-in-depth element of the separation and protection (or comparable) configuration, described in Section 3.2 above, to provide reasonable assurance that the control room roof will provide an adequate level of fire safety for post-fire safe shutdown.

Primary suppression for this FZ is supplied by eleven nearby portable fire extinguishers. The licensee's submittal identifies six extinguishers in FZs 105 and 117 (described in Section 3.2). The staff found that the FHA (on page 9.6A–230 of the UFSAR) also identifies the five fire extinguishers in the Control Room for primary suppression in this zone. Therefore, operators responding to a fire in this zone, from the Control Room or from nearby areas, can minimize their response times by using those extinguishers that are most accessible. The licensee stated in its July 12, 2006, letter that it intends to revise this page of the FHA to include all eleven extinguishers.

Secondary suppression is provided by nearby hose stations. The nearest hose station, which is located at the 42-foot elevation (the turbine deck) just outside the roof access stairway, has 75 feet of hose for additional suppression capability, providing stream access to all points in FZ 106R located on the 58-foot elevation.

The combination of the primary and secondary sources of suppression provide reasonable assurance of adequate suppression capability, given the open air configuration and absence of any significant combustible and ignition source loading in this zone.

3.3.2 FZ 97—Mechanical Equipment Room

The safe shutdown equipment in this FZ consists of the emergency recirculating filter unit and the air handling supply fans for the control room. Fire protection features in FZ 97 include nearby suppression capabilities, a component-specific detector, administrative controls for combustibles, ventilation capability, and rated fire barriers for the walls, floor, and ceiling.

In situ combustible loadings are identified in the FHA as cable insulation, oil (motor), pipe insulation, and charcoal. Cable insulation was quantified as 252 pounds (lbs), for a potential heat load of 3.3 million BTU, and Charcoal as 250 lbs, with a potential heat load of 4.5 million BTU. Oil and pipe insulation are present in such small quantities that they contribute a negligible heat load. The staff, therefore, concludes that the combustible and ignition source loading in this zone is not significant.

The walls, floor, and ceiling are concrete block or reinforced concrete, providing 3-hour rated fire barrier protection.

Although no full area detection is provided in FZ 97, the licensee proposes to install area detection to satisfy the detection requirements of III.G.3. New ionization detectors that meet the requirements of the latest edition of National Fire Protection Association Standard 72 will be installed outside of any direct, forced-air flow paths in FZ 97. If actuated, the detectors will initiate an alarm in the Main Control Room to alert operators to summon the fire brigade to respond with manual fire suppression. An existing ionization smoke detector is located inside the air handling duct work downstream of the motors and charcoal filter, also with a Main Control Room alarm. With the installation of area detection as described above, the detection provided in FZ 97 will be acceptable for compliance with III.G.3.

No fixed suppression is located in this zone. However, four nearby portable fire extinguishers (described in Section 3.2) provide an adequate primary suppression capability for the combustible and ignition source loading in this zone, with the hose station at the 30-foot elevation (the mezzanine level) as a secondary means of suppression with 100 feet of hose providing stream access to all points in FZ 97. The primary and secondary sources of suppression provide reasonable assurance of adequate suppression capability, given the installation of detection, as described above, and the absence of any significant combustible and ignition source loading in this zone.

The staff asked the licensee to provide information on whether a fire that caused failure of the safety-related equipment in either FZ 97 or 106R, resulting in loss of Main Control Room HVAC equipment, would challenge the safe shutdown capability of the plant. The licensee responded that, with no reduction in the Main Control Room heat load, the rise in Main Control Room temperature for this scenario, although not analyzed for these FZs specifically, is expected to be consistent with or bounded by the rate of temperature increase during a complete loss of HVAC for other individual rooms in the Control Building, including the Computer Room, which results in bulk ambient temperatures that remain below 104° F during the first hour of the event without compensatory cooling. Therefore, there is reasonable assurance that a minimum of greater than 30 minutes would be available before a loss of Control Room habitability. If the Control Room is evacuated, the plant is shut down from the Alternate Shutdown Panel. Each unit has an Alternate Shutdown Panel, located in the Unit's "B" Switchgear Room, with adequate controls to bring the plant to hot standby. A minimum of greater than 30 minutes is sufficient time for operators to either shut down the plant from the Main Control Room or to evacuate the Main Control Room due to high temperature and safely shut down the plant from the Alternate Shutdown Panel.

3.3.3 Risk Analysis

Because the combustibles and ignition source loading are not significant for this zone and the suppression capability more than adequate, no risk analysis was performed by the licensee for lack of detection and fixed suppression. However, the NRC's Turkey Point

[2] According to the Underwriters Laboratories, Inc., Roofing Materials and Systems Directory, Class A includes roof coverings which are effective against severe fire exposures. Under such exposures roof coverings of this class are not readily flammable and do not carry or communicate fire; afford a fairly high degree of fire protection to the roof deck; do not slip from position; possess no flying brand hazard; and do not require frequent repairs in order to maintain their fire resisting properties.

Triennial Fire Inspection Report, dated March 2004 (ADAMS Accession No. ML040890083), states that the NRC staff analyzed the safety significance of the lack of detection and fixed suppression using NRC Inspection Manual Chapter 609, "Significance Determination Process," Appendix F. The staff concluded that the condition had very low safety significance.

3.3.4 Defense-in-Depth

Section II of 10 CFR 50, Appendix R, states that a licensee's fire protection program shall extend the concept of defense-in-depth to fire protection with the following objectives:

- To prevent fires from starting,
- To detect rapidly, control, and extinguish promptly those fires that do occur, and
- To provide protection for structures, systems and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," also identifies factors to be considered when evaluating defense-in-depth for a risk-informed change. The staff has evaluated the elements of defense-in-depth used for fire protection at Turkey Point Nuclear Plant that are applicable to the FZs under review. For FZ 106R, based on a configuration of separation and fire barrier protection of redundant trains of safety-related equipment, the absence of significant fire loading, adequate primary and secondary suppression capabilities, the open-air configuration, implementation of transient combustibles controls, and sufficient time for operators to respond to a fire in this zone, the staff finds that fixed suppression and detection are not necessary to ensure safe shutdown of the plant and meet the underlying intent of the rule (Subsection III.G.3 to 10 CFR 50, Appendix R). For FZ 97, based on fire barrier protection in the walls, floor and ceiling; existing (and installation of proposed) fire detection, adequate primary and secondary suppression capabilities, implementation of transient combustibles controls, sufficient time for operators to respond to a fire in this zone, and the absence of significant fire loading, the staff finds that fixed suppression is not necessary to ensure safe shutdown of the plant and meet the underlying intent of the rule. Therefore, based on the staff's analysis, defense-in-depth is maintained.

Special Circumstances. Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50, Appendix R, Subsection III.G.3. is to assure alternative or dedicated shutdown capability in the event of a fire. Based on the evaluation presented in Section 3.3, the staff finds that fixed suppression and detection in FZ 106R and fixed suppression in FZ 97 are not necessary to ensure safe shutdown of the plant and meet the underlying intent of the rule. For FZ 106R, the combination of the primary and secondary sources of suppression provide reasonable assurance of adequate suppression capability, given the open air configuration and absence of any significant combustible and ignition source loading in this zone. For FZ 97, the primary and secondary sources of suppression provide reasonable assurance of adequate suppression capability, given the proposed installation of detection, as described above, and the absence of any significant combustible and ignition source loading in this zone. Also, for a fire in either zone, there would be adequate time to evacuate the Control Room, if necessary, and shut down the plant from the Alternate Shutdown Panel. Therefore, since the underlying purpose of 10 CFR 50, Appendix R, Subsection II.G.3 is achieved, the special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50 exist.

Authorized by Law. This exemption would waive the requirements of Subsection III.G.3 of 10 CFR 50, Appendix R, for fixed suppression in the Mechanical Equipment Room and for fixed suppression and detection on the Control Room Roof, at Turkey Point, Units 3 and 4. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption is permissible under the Atomic Energy Act of 1954, as amended, and the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety. The underlying purpose of 10 CFR 50, Appendix R, Subsection III.G.3. is to assure alternative or dedicated shutdown capability in the event of a fire. As noted above, the staff finds that the proposed exemption utilizes the existing fire barriers at Turkey Point, together with fire protection measures, low combustible loading, and administrative controls in place, to satisfy the underlying intent of 10 CFR 50, Appendix R, Subsection III.G.3. Thus, no new accident precursors are created by the proposed exemption, and the probability of postulated accidents is not increased. Similarly, the consequences of postulated accidents are not increased. Therefore, there is no undue risk [since risk is probability × consequences] to public health and safety.

Consistent with Common Defense and Security. The proposed exemption would waive the requirements of Subsection III.G.3 of 10 CFR 50, Appendix R, for fixed suppression in the Mechanical Equipment Room and for fixed suppression and detection on the Control Room Roof, at Turkey Point, Units 3 and 4. This change in fire protection requirements has no relation to security issues. Therefore, the common defense and security are not impacted by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), special circumstances are present such that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. In addition, the Commission has determined that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants FPL an exemption from the requirements of 10 CFR 50, Appendix R, Section III.G.3, to provide area detection and a fixed fire suppression system in FZ 106R and to provide a fixed fire suppression system in FZ 97 for the Turkey Point Nuclear Plant, Units 3 and 4, subject to the installation of proposed area fire detection in FZ 97 (discussed in Section 3.3.2 above). The granting of this exemption is contingent upon installation of the proposed area fire detection in FZ 97, maintaining existing or comparable separation and protection for redundant safe shutdown equipment in FZ 106R, the availability of manual firefighting and associated firefighting equipment, and maintaining existing or comparable administrative controls for combustibles.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the

human environment (71 FR 56188, dated September 26, 2006).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–16357 Filed 10–3–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2004 and 2005 Annual Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2005 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. In a November 22, 2005 notice, USTR published a list of responsive petitions that were accepted for review. In a February 27, 2006 notice, USTR specified the results of the preliminary review of those petitions as well as the status of the petitions filed in 2004 that have remained under review. This notice provides an update on the status of those reviews.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Public Law 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended.

In a **Federal Register** notice dated August 18, 2005, USTR initiated the 2005 ATPA Annual Review and announced a deadline of September 19, 2005 for the filing of petitions (69 FR 51138). Several of these petitions requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203(c) and (d); 19 U.S.C. 3203(b)(6)(B)).

In a **Federal Register** notice dated November 22, 2005, USTR published a list of the responsive petitions filed pursuant to the announcement of the annual review (69 FR 65674). In a **Federal Register** notice dated February 27, 2006, USTR announced the results of the preliminary review by the Trade Policy Staff Committee (TPSC) of these petitions. The notice also indicated that the TPSC would continue to review the remaining 2004 petitions. The TPSC has now determined that the issues raised in the petition filed by LeTourneau of Peru, Inc. with respect to Peru have been resolved. Therefore, that petition does not require further action, and the TPSC is terminating its review.

With respect to the remaining petitions, the TPSC is modifying the schedule for this review, in accordance with 15 CFR 2016.2(b). This review will continue through December 31, 2006, which is the period that the ATPDEA is in effect. Following is the list of all petitions that remain under review:

Peru: Engelhard;

Peru: Princeton Dover;

Peru: Duke Energy;

Ecuador: AFL–CIO; Human Rights Watch; and US/LEAP;

Ecuador: Chevron Texaco.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E6–16421 Filed 10–3–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF PERSONNEL MANAGEMENT

Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment to this demonstration to facilitate the transition of Acquisition Demonstration Project employees to the National Security Personnel System (NSPS) by authorizing an out-of-cycle Contribution-based Compensation and Appraisal System (CCAS) payout and amending conversion-out procedures.

SUMMARY: The Department of Defense (DoD or "the Department"), with the approval of the Office of Personnel Management (OPM), received authority to conduct a personnel demonstration project within DoD's civilian acquisition workforce and those supporting personnel assigned to work directly with it. [See Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. section 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85)]. The project was developed under legislative authority granted in Fiscal Year 1996 and modified in Fiscal Year 1998. Subsequent legislation authorized establishment of NSPS, a human resources management system for DoD under 5 U.S.C. 9902, as enacted by section 1101 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). This notice provides authorization for an out-of-cycle payout under CCAS prior to transition to NSPS and addresses procedures for conversion of employees from this demonstration project to NSPS.

DATES: This amendment is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: *DoD:* Mary S. Thomas, Civilian Acquisition Workforce Personnel Demonstration Project, 2001 North Beauregard Street, Suite 210, Alexandria, VA 22311, 703–681–3508. *OPM:* Michael Carmichael, U.S. Office of Personnel Management, 1900 E Street NW., Room 7412, Washington, DC 20415, 202–606–1868.

SUPPLEMENTARY INFORMATION:

1. Background

OPM approved and published the project plan for the Civilian Acquisition Workforce Personnel Demonstration Project in the **Federal Register** on January 8, 1999 (Volume 64, Number 5, Part VII). Since that time, three amendments have been published. The first amendment was published in the May 21, 2001, **Federal Register**, Volume 66, Number 98, to (1) correct discrepancies in the list of occupational series included in the project and (2) authorize managers to offer a buy-in to Federal employees entering the project after initial implementation. A second amendment was published in the April 24, 2002, **Federal Register**, Volume 67, Number 79, to (1) make employees in the top broadband level of their career path eligible to receive a "very high" overall contribution score and (2) reduce the minimum rating period under CCAS to 90 consecutive calendar days. Finally, the third amendment was published in the July 1, 2002, **Federal Register**, Volume 67, Number 126, to (1) list all organizations that are eligible to participate in the project and (2) make the resulting adjustments to the table

that describes the project's workforce demographics and union representation. This demonstration project involves hiring and appointment authorities; broadbanding; simplified classification; a contribution-based compensation and appraisal system; revised reduction-in-force procedures; academic degree and certificate training; and sabbaticals.

2. Overview

This amendment provides the authority to individual DoD Components to conduct an out-of-cycle CCAS payout prior to transition to NSPS. Prior to transition of any demonstration project employees to NSPS, a CCAS closeout appraisal must be accomplished and an out-of-cycle payout may be made. The required funding floors [not less than two percent of an activity's total salary budget for Contribution Rating Increases (CRIs) and not less than one percent of an activity's total salary budget for Contribution Awards (CAs)] may be suspended for any out-of-cycle payout. This amendment also provides authority to convert employees from this demonstration project to NSPS in accordance with DoD implementing issuances pursuant to 5 U.S.C. 9902. Office of Personnel Management.

Linda M. Springer,
Director.

I. Executive Summary

The project was designed by a Process Action Team (PAT) under the authority of the Under Secretary of Defense for Acquisition and Technology, with the participation of and review by DoD and OPM. The purpose of the project is to enhance the quality, professionalism, and management of the DoD acquisition workforce through improvements in the human resources management system.

II. Introduction

This demonstration project provides managers, at the lowest practical level, the authority, control, and flexibility they need to achieve quality acquisition processes and quality products. This project not only provides a system that retains, recognizes, and rewards employees for their contribution, but also supports their personal and professional growth.

A. Purpose

The purpose of this amendment is to ensure that demonstration employees are not inadvertently penalized, but receive their earned contribution-based permanent pay increases and/or contribution awards, upon transition to NSPS. Additionally, since the current demonstration project plan only contains conversion-out procedures for employees converting back to General Schedule positions, this amendment will authorize conversion-out procedures for employees transitioning to NSPS. Pursuant to 5 CFR 470.315, an amendment is hereby made to the **Federal Register**, Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense; Notice, Friday, January 8, 1999, Volume 64, Number 5, Part VII.

B. Employee Notification and Collective Bargaining Requirements

The demonstration project program office shall notify employees of this amendment by posting it on the demonstration's Web site (*http://www.acq.osd.mil/dpap/policy/acqdemo/ index.htm*). Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

III. Personnel System Changes

[64 FR 1452] Section III.D.1. Contribution-Based Compensation and Appraisal System. Insert the following new paragraph after the 2nd paragraph: "As described in detail below, the CCAS uses performance factors to measure contributions for appraisal purposes. Any AcqDemo organization scheduled to transition to the National Security Personnel System (NSPS) may notify affected employees that, as of a specified date, the performance appraisal provisions of Section III.D. shall cease to apply, and that appropriate performance management standards may be substituted for CCAS performance factors until the organization is covered by NSPS."

[64 FR 1477] Section III.D.4. Pay Pools. Amend the last sentence of the last paragraph to read, "The funds to be included in the pay pool will be computed based on the salaries of the employees in the pay pool as of the last calendar day of the CCAS appraisal period."

[64 FR 1478] Section III.D.5. Salary Adjustment Guidelines. Insert as last sentence in 4th paragraph (that begins "The contribution rating increase* * *"): In the event of an out-of-cycle payout (see Section V.C.), this funding floor may be suspended.

[64 FR 1478] Section III.D.5. Salary Adjustment Guidelines. Insert as last sentence in 5th paragraph (that begins "The contribution award fund* * *"): In the event of an out-of-cycle payout (see Section V.C.), this funding floor may be suspended.

[64 FR 1484] Section V.C. [Added.] C. Conversion to the National Security Personnel System (NSPS). Prior to transition of any demonstration project employees to NSPS, a CCAS closeout appraisal must be accomplished and an out-of-cycle payout may be made. Funding levels for out-of-cycle payouts may be reduced on a pro rata basis if the period between the previous CCAS payout and the out-of-cycle payout was less than one year. Funding that corresponds to the general pay increase shall not form part of the pay pools for any out-of-cycle payouts. Thereafter, conversion of employees covered by this demonstration to NSPS shall be accomplished in accordance with NSPS implementing issuances published by the Department. The General Schedule conversion procedures regarding reduction-in-force service credit (*i.e.*, Section V.B.4. of the existing demonstration project plan) shall not apply to employees converted from the demonstration to NSPS, because after conversion to NSPS, the Department will determine retention standing solely on the basis of the NSPS final regulations at 5 CFR part 9901, subpart F, and related implementing issuances.

[FR Doc. E6–16261 Filed 10–3–06; 8:45 am]
BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–135]

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.
Extension: Rules 8b–1 to 8b–33; OMB Control No. 3235–0176.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Rules 8b–1 to 8b–33 (17 CFR 270.8b–1 to 8b–33) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the "Act") are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to

provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy-making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–33 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.*, Form N–1A, Form N–2, Form N–3, and Form N–4). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process.

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 R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 27, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–16330 Filed 10–3–06; 8:45 am]

BILLING CODE 8010–01–P

[1] Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27506; 812–12799]

RiverSource Diversified Income Series, Inc., et al.; Notice of Application

September 28, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: RiverSource Diversified Income Series, Inc., RiverSource California Tax-Exempt Trust, RiverSource Bond Series, Inc., RiverSource Equity Series, Inc., RiverSource High Yield Income Series, Inc., RiverSource Government Income Series, Inc., RiverSource Global Series, Inc., RiverSource Large Cap Series, Inc., RiverSource Tax-Exempt Income Series, Inc., RiverSource International Series, Inc., RiverSource Investment Series, Inc., RiverSource Strategic Allocation Series, Inc., RiverSource Market Advantage Series, Inc., RiverSource Money Market Series, Inc., RiverSource Dimensions Series, Inc., RiverSource International Managers Series, Inc., RiverSource Managers Series, Inc., RiverSource Selected Series, Inc., RiverSource Short Term Investments Series, Inc., RiverSource Income Series, Inc., RiverSource Strategy Series, Inc., RiverSource Special Tax-Exempt Series Trust, RiverSource Tax-Exempt Series, Inc., RiverSource Tax-Exempt Money Market Series, Inc., RiverSource Sector Series, Inc., RiverSource Variable Portfolio-Income Series, Inc., RiverSource Variable Portfolio-Investment Series, Inc., RiverSource Variable Portfolio-Managed Series, Inc., RiverSource Variable Portfolio-Money Market Series, Inc., RiverSource Variable Portfolio-Managers Series, Inc., RiverSource Variable Portfolio-Select Series, Inc., RiverSource Retirement Series Trust (collectively, the "Companies"), RiverSource Investments, LLC ("RiverSource"), and Ameriprise Financial, Inc. ("Ameriprise").

Filing Dates: The application was filed on March 26, 2002, and amended on September 27, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 23, 2006, 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, Commission, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Companies, 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268; and RiverSource and Ameriprise, 200 Ameriprise Financial Center, Minneapolis, MN 55474.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel at (202) 551–6873 or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. (202) 551–5850).

Applicants' Representations

1. The Companies are organized as Minnesota corporations or Massachusetts business trusts and are registered under the Act as open-end management investment companies.[1] Most Companies offer one or more series, each with a different investment objective and different investment policies. RiverSource is registered as an investment adviser under the Investment Advisers Act of 1940. RiverSource has entered into an investment management services agreement with each Fund. Ameriprise serves as the administrator to each Fund under the terms of its administrative services agreement with the Fund. RiverSource is a wholly-owned subsidiary of Ameriprise.

2. The Funds may lend cash to banks or other entities by entering into repurchase agreements either directly or through the "Joint Accounts" (as defined below), purchasing short-term investments or under arrangements whereby custodian fees are reduced. Each Fund may deposit uninvested daily balances into one or more joint trading accounts administered by RiverSource and its affiliates ("Joint Accounts") and invest the daily balance of the Joint Accounts in repurchase agreements. An existing Commission order also permits each Fund to invest uninvested cash and cash collateral in one or more money market Funds that comply with rule 2a–7 under the Act.

3. Currently, the Funds have a committed line of credit from a bank. Each Fund can borrow money from the bank to complete security transactions suspended by the closing of the electronic money transfer systems or to meet redemptions on a timely basis regardless of whether sale transactions are awaiting settlement. The amount of each Fund's borrowing under the committed line of credit is limited to the amount permitted by the Fund's fundamental investment policies.

4. If the Funds were to borrow money from the bank under their committed line of credit, the Funds would pay interest on the borrowed cash at a rate which would likely be significantly higher than the rate that would be earned by other non-borrowing Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as the middleman between a borrower and a lender. The Funds pay an annual commitment fee for the committed line of credit.

5. Applicants request an order that would permit the Funds to enter into a master interfund lending agreement ("Interfund Lending Agreement") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants state that the proposed credit facility would reduce potential borrowing Funds' costs and enhance lending Funds' ability to earn higher rates of interest on short-term loans. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish and/or continue committed lines of credit or other borrowing arrangements with banks.

6. The credit facility may be used when the cash position of a Fund is insufficient to meet a day's cash requirements, such as when shareholder redemptions exceed anticipated volumes. When a Fund sells portfolio securities to meet redemption requests, it may not receive payment in settlement for up to three days, or longer in the case of certain foreign transactions, even though redemption requests are normally satisfied immediately. Other reasons that cash may not be available in a timely fashion to meet redemptions or settle transactions are: circumstances such as following September 11, 2001; when a sale of securities fails; or improper delivery instructions by the broker effecting the transaction delays delivery of cash to the custodian. In such cases, the credit facility could provide a source of immediate, short-term liquidity pending receipt of cash and result in savings to the borrowing Fund and increased returns to the lending Funds.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds. The interest rate charged to a Fund on any loan made pursuant to the proposed credit facility ("Interfund Loan Rate") would be determined daily and would be the average of the "Joint Accounts Repo Rate" and the "Bank Loan Rate," both as defined below. The Joint Accounts Repo Rate for any day would be the current overnight repurchase agreement rate available through the Joint Accounts. The Bank Loan Rate for any day would be calculated by the "Credit Facility Team" (as defined below) on each day an Interfund Loan is made according to a formula established by each Fund's board of directors or trustees ("Board") intended to approximate the lowest interest rate at which a bank short-term loan would be available to the Fund. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Board of each Fund would periodically review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Fund. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

8. The credit facility would be administered by the Fund's treasurer, a representative from Ameriprise's treasury department, and a representative from compliance, all of whom are employees of Ameriprise (collectively, the "Credit Facility Team"). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Credit Facility Team has allocated cash for

[1] Applicants request that the order also apply to any existing or future series of the Companies and to any other registered open-end management investment company or its series for which RiverSource or a person controlling, controlled by, or under common control with RiverSource serves as investment adviser (collectively, together with the Companies, the "Funds"). All existing registered investment companies that currently intend to rely on the requested order have been named as applicants. Any other existing or future Fund that relies on the requested order in the future will comply with the terms and conditions of the application.

Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds. The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

9. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

10. The Credit Facility Team would (a) Monitor the interest rates charged and the other terms and conditions of the Interfund Loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of directors or trustees who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Board Members"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. Ameriprise, through the Credit Facility Team, would administer the credit facility as part of its duties under its existing administrative services agreement with each Fund and would receive no additional compensation for its services. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus or statement of additional information ("SAI"); and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

12. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having RiverSource as their common investment adviser and/or by reason of having common officers and/or directors or trustees.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) Ameriprise, through the Credit Facility Team, would administer the program as a disinterested party; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the quarterly commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or to the Funds' shareholders, and that Ameriprise will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide

economic benefits for all of the participating Funds.

6. Section 18(f)(1) of the Act prohibits registered open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) of the Act that all borrowings of a Fund, including combined Interfund Loans and bank borrowings, have at least 300 per centum asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1) of the Act.

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Joint Accounts Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Joint Accounts Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Joint Accounts Repo Rate and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility only on a secured basis. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% of its total assets is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause the lending Fund's aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's current net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day

when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate interfund loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Credit Facility Team will invest amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Credit Facility Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Fund concerning the participation of the Fund in the credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Fund, including a majority of the Independent Board Members, will: (a) Review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) establish the Bank Loan Rate formula used to determine the Interfund Loan Rate and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

16. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team promptly will refer the loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as the arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

17. The Credit Facility Team will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Team will report on the operations of the credit facility at the quarterly meetings of each Fund's Board.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Credit Facility Team's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Joint Accounts Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, each Fund's independent public accountant, in connection with its audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and its review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus or SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–16365 Filed 10–3–06; 8:45 am]

BILLING CODE 8010–01–P

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8743; 34–54519; File No. 4–526]

SEC Government-Business Forum on Small Business Capital Formation

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment in connection with Forum on Small Business Capital Formation.

SUMMARY: The Securities and Exchange Commission is providing for additional public input in connection with its annual Government-Business Forum on Small Business Capital Formation, to be held Friday, September 29, 2006, beginning at 9 a.m. EDT, at its Washington, DC headquarters. The morning sessions of the Forum will be Webcast on the Commission's Web site at *www.sec.gov*. The public is invited to submit written statements in connection with the Forum.

This year's Forum program will include two roundtable discussions in the morning. The first roundtable will discuss the advantages to smaller public companies of filing interactive data with the SEC. The second roundtable will discuss current issues in capital raising techniques for small business, such as the status of the IPO (initial public

offering) market and PIPE (private investment in public equity) offerings.

The Commission expects that the Forum will develop recommendations for government and private action to facilitate small business capital formation. The afternoon sessions of the Forum, which will not be Webcast, will be devoted to breakout sessions to develop recommendations.

More information about the Forum is available at *www.sec.gov/info/smallbus/sbforum.shtml*.

DATES: Written statements should be received on or before October 15, 2006.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/sbforum.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov*. Please include File Number 4–526 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 4–526. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements submitted on the Forum Web page at *http://www.sec.gov./info/smallbus/sbforum.shtml*. Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anthony G. Barone, Special Counsel, at (202) 551–3260, at Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

Dated: September 26, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–16331 Filed 10–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54530; File No. SR–NYSE–2006–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending Rule 123D (Openings and Halts in Trading) and Rule 15 To Shorten the Minimum Required Time Periods Between Tape Indications and Openings or Reopenings

September 28, 2006.

On June 30, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 123D and 15 to shorten the minimum time periods between tape indications and openings or reopenings of a security and after an "Equipment Changeover."[3] On August 14, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 28, 2006.[5] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to amend NYSE Rules 123D and 15 to shorten the minimum time periods between tape indications and openings or reopenings of a security and after an "Equipment Changeover." In connection with a delayed opening of trading in a security, Exchange Rule 123D currently requires a minimum of ten minutes to elapse between the first price indication and the opening of the stock, and where there is more than one indication, a minimum of five minutes to elapse after the last indication, provided in all cases that at least ten minutes have elapsed since the first indication. The Exchange's proposal would reduce these minimum time periods from ten to three minutes after the first indication, and to one minute after the last indication, provided that a minimum of three minutes has elapsed since the first indication.

With respect to the reopening of trading after a stock has been halted during the trading day, Exchange Rule 123D currently requires a minimum of five minutes to elapse between the first indication and the reopening of trading, and a minimum of three minutes to elapse after the last indication, provided that at least five minutes has elapsed since the first indication. The Exchange's proposal would reduce these minimum time periods to three minutes after the first indication, and to one minute after the last indication, provided that a minimum of three minutes has elapsed since the first indication.

With respect to the reopening of trading after a stock has been halted during the trading day because of "Equipment Changeover," Exchange Rule 123D currently requires a minimum of five minutes to elapse before trading resumes following an Equipment Changeover. Further, if, during the "Equipment Changeover" trading halt, a significant order imbalance[6] develops or a regulatory condition occurs, the nature of the halt will be changed and notice must be disseminated and trading cannot resume until ten minutes after the first indication of the new halt condition. The Exchange's proposal would reduce these minimum time periods to one minute after an "Equipment Changeover" and to three minutes after an "Equipment Changeover" during which a significant order imbalance or regulatory condition develops.

Lastly, NYSE proposes to amend Exchange Rule 15 to conform with a recent amendment to the Intermarket Trading System Plan ("ITS Plan"). In particular, the Exchange's proposal would require that, when more than one indication is disseminated, a stock may reopen one minute after the last indication if three minutes have elapsed after the first indication.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 123D(2).

[4] In Amendment No. 1, NYSE made minor revisions to the proposed rule text and clarified that all market participants may react to published price indications.

[5] *See* Securities Exchange Act Release No. 54337 (August 21, 2006). 71 FR 50963 ("Notice").

[6] The Exchange indicated in the Notice that a "significant order imbalance" is one which would result in a price change from the last sale of one point or more for stocks under $10, the lesser of 10% or three points for stocks between $10–$99.99 and five points for stocks $100 or more—unless a Floor Governor deems circumstances warrant a lower parameter.

[7] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposal appears designed to strike a reasonable balance between preserving the opportunity for price discovery before a stock opens or reopens while providing timely opportunities for investors to participate in the market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2006–49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16367 Filed 10–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54526; File No. SR–CBOE–2006–70]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Adopt Rules Relating to Regulation NMS

September 27, 2006.

I. Introduction

On August 18, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposal to modify its rules relating to the trading of non-option securities to conform with Regulation NMS. The proposal was published for comment in the **Federal Register** on August 25, 2006.[3] The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on September 27, 2006.[4] This notice and order requests comment on Amendment No. 1 and approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

The Commission recently approved the Exchange's proposal to establish a new electronic trading system for non-option securities known as "Stock Trading on CBOE*direct*" or "STOC."[5] In this filing, CBOE proposes additional rules and additional system functionality to STOC designed to comply with Regulation NMS and to enable CBOE to qualify as automated trading center whose quotations will be protected under Regulation NMS. In its release extending the compliance dates for Rules 610 (the Access Rule) and 611 (the Order Protection Rule) of Regulation NMS,[6] the Commission established a "Specifications Date" of October 16, 2006, by which final technical specifications for interaction with Regulation NMS-compliant trading systems of automated trading centers must be published on SRO Web sites. Among other things, these specifications must address: (1) The identification of quotations as automated or manual to meet the requirements of Rule 600(b)(4);[7] (2) an immediate-or-cancel order ("IOC") functionality that meets the requirements of Rule 600(b)(3);[8] and (3) an intermarket sweep order ("ISO") functionality that allows other industry participants to meet the requirements of Rule 600(b)(30).[9] The proposed rules would modify the existing STOC rules to address these requirements as well as other matters relating to Regulation NMS.

Unless execution of an order would cause an impermissible trade-through of a protected quotation of another trading center, all marketable orders would automatically execute on the STOC system against the system's best bid or offer (which incorporates resting limit orders and interest from CBOE market-makers). There would be no manual quotations, and STOC is designed to provide quotations that are always "automated" for purposes of Rule 600(b)(4). If CBOE were to experience a technical failure, it would cease disseminating quotations (as opposed to disseminating manual quotations).[10]

The Exchange also proposes to modify its existing rule defining and governing the handling of IOC orders to make clear that, consistent with the requirements of Regulation NMS, IOC orders routed to the STOC System would either be immediately executed (in part or in full) or canceled.[11] The Exchange also is proposing to adopt a rule providing that, consistent with the requirements of Regulation NMS, ISOs routed to CBOE would be immediately and automatically executed on receipt without regard for better-priced protected quotations displayed by other trading centers.[12]

CBOE has proposed additional rules relating to Regulation NMS. First, as required by Rule 610(d) of Regulation NMS,[13] CBOE has proposed to add language providing that members should reasonably avoid displaying quotations that lock or cross protected quotations from other trading centers.[14]

Second, the Exchange is proposing language that will allow it to invoke the "self-help" exception contained in Rule 611(b)(1) of Regulation NMS.[15] CBOE could invoke self-help and bypass quotations displayed by a trading center if the trading center repeatedly fails to respond within one second to orders attempting to access its protected quotations, provided the failures are attributable to the trading center and not to transmission delays outside its control. CBOE must immediately notify the trading center of its determination to invoke self-help.[16]

Third, when appropriate functionality is available on CBOE, the Exchange would provide outbound routing, through a third-party service provider ("Routing Service Provider"), to other trading centers displaying better-priced protected quotations on behalf of orders that may be routed.[17] This outbound

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53112 (January 12, 2006), 71 FR 3579.

[4] Amendment No. 1 replaced the original filing in its entirety.

[5] 5 See Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR–CBOE–2004–21).

[6] Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) ("Regulation NMS Compliance Date Release").

[7] 17 CFR 242.604(b)(4).

[8] 17 CFR 242.604(b)(3).

[9] 17 CFR 242.604(b)(30).

[10] *See* proposed CBOE Rule 52.13(a).

[11] Such orders would not be "held up" for manual processing or for potential price improvement above CBOE's disseminated quotation. *See* proposed CBOE Rule 51.8(g)(4).

[12] *See* proposed CBOE Rule 51.8(n).

[13] 17 CFR 242.610(d)

[14] *See* proposed CBOE Rule 52.12.

[15] 17 CFR 242.611(b)(1).

[16] *See* proposed CBOE Rule 52.13(b).

[17] Prior to that time, however, CBOE would access better-priced quotations through the ITS Plan (or its successor). Under previously approved STOC rules, when STOC receives a marketable order that cannot be executed without causing a trade-through (and assuming that the order is not an IOC order), the system will display the order to market participants at the NBBO price for a short time (three seconds or less, to be determined by the Exchange's STOC Trading Committee). If no market participant "steps up" to the NBBO during the display period, the system will route the order to the STOC DPM for

routing would be provided directly and automatically by CBOE pursuant to three separate agreements: (1) An agreement between the Exchange and each member on whose behalf orders would be routed; (2) an agreement between the Exchange and each third-party broker-dealer that would serve as a "give-up" on an away trading center; and (3) an agreement between the Exchange and the Routing Service Provider, pursuant to which the Exchange would transmit to the Routing Service Provider orders for outbound routing, with embedded routing instructions as determined by the STOC System, which orders would then be routed via the Routing Service Provider's connectivity to the appropriate market centers for automatic execution.[18] With respect to these routing services, CBOE would establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Routing Service Provider. To the extent the Routing Service Provider reasonably receives confidential and proprietary information, its use of such information would be restricted to legitimate business purposes necessary for providing routing services.

Fourth, the Exchange has proposed a change to CBOE Rule 53.56(b)(6). This provision sets forth the obligation of a designated primary market-maker on the STOC System ("STOC DPM")[19] to act as agent for orders that are not executed on the system because CBOE is not at the NBBO, and requires the STOC DPM to accord priority to such public customer orders over the STOC DPM's principal transactions. In Amendment No. 1, the Exchange proposes to delete language that permits the STOC DPM to trade on parity with the public customer order the STOC DPM represents as agent in this situation if the customer consents to giving up its priority.

Finally, in Amendment No. 1, the Exchange has proposed to delete portions of existing CBOE Rules 52.1(d) and 53.24(b) relating to the priority of automatically regenerated quotations of STOC market-makers. As a result, an automatically regenerated quotation of a STOC market-maker would be assigned the same priority that a newly generated quotation by the market-maker would have at the time of regeneration.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 6(b)(8) of the Act,[22] which prohibits an exchange's rules from imposing a burden on competition that is not necessary or appropriate in furtherance of the Act. Finally, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C) of the Act,[23] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers and among exchange markets, and between exchange markets, and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

The Commission did not receive any comments on the proposal. This order approves the rule change, as amended.

A. Compliance With Regulation NMS

1. Automated Quotations/Automated Trading Center

CBOE seeks to qualify as an automated trading center under Regulation NMS. To do so, an exchange must display automated quotations.[24] An automated quotation is a quotation displayed by a trading center that, among other things, permits an incoming order to be marked immediate-or-cancel, immediately and automatically executes an order so marked against the displayed quotation or cancels without routing elsewhere, immediately transmits a response, and immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.[25]

The Commission finds that the Exchange's proposed rules are consistent with the requirements of Regulation NMS with respect to automated quotations. CBOE Rule 51.8(g)(4) provides for submission of IOC orders that are either immediately executed (in whole or in part) or canceled. Moreover, CBOE Rule 52.6 has been amended to clarify that orders marked IOC will not be delayed for potential price improvement on the STOC System. Automated trading centers are also required to identify all quotations other than automated quotations as manual quotations, and to adopt reasonable standards limiting when the exchange's quotations change to manual quotations.[26] CBOE has elected not to display manual quotations, but rather would cease disseminating quotations when a technical failure renders it unable to display automated quotations. The Commission finds that CBOE's election not to disseminate quotations when its quotations are not automated is consistent with the Act in general, and with Regulation NMS in particular.

2. Protection of Automated Quotations

The Order Protection Rule requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks, unless an exception applies.[27] The provisions discussed below relate to the protection of automated quotations by the STOC System.

a. Intermarket Sweep Order

Rule 600(b)(30) of Regulation NMS details the requirement for an ISO functionality that allows other industry participants to meet the requirements of the Order Protection Rule. CBOE's proposed rules define an ISO as a limit

manual handling. The STOC DPM may either itself step up to the NBBO price and execute the order, or route the order via the ITS Plan (or its successor) to the other market(s) disseminating the NBBO. If a better price becomes available prior to the DPM routing away, such better price must be taken into account by the DPM. *See* CBOE Rule 52.6.

[18] *See* proposed CBOE Rule 52.10.

[19] *See* CBOE Rule 53.50 (defining STOC DPM).

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(8).

[23] 15 U.S.C. 78k–1(a)(1)(C).

[24] *See* 17 CFR 242.600(b)(4)(i).

[25] *See* 17 CFR 242.600(b)(3).

[26] *See* 17 CFR 242.600(b)(4).

[27] *See* 17 CFR 242.611(a)(1).

order in an NMS stock that is received by the system from a member which is to be executed: (1) Immediately at the time such order is received; (2) without regard for better-priced protected quotations displayed at one or more other market centers; and (3) at prices equal to or better than the limit price, with any portion not so executed to be treated as canceled.[28] The Commission believes that CBOE's proposed definition of intermarket sweep order is consistent with the requirements of Regulation NMS and thus is consistent with the Act.

b. Routing of Orders

As described above, the Exchange would enter into agreements that govern the routing of orders to away markets displaying better-priced protected quotations.[29] Proposed CBOE Rule 52.10 describes the arrangement between the Exchange and a Routing Service Provider. The Commission believes that engaging a Routing Service Provider, as set forth in the rule, is a reasonable means of promoting compliance with Rule 611 of Regulation NMS. The Exchange would be responsible for routing decisions and would retain control of the routing logic. The Commission also notes that the rule contemplates procedures and internal controls designed to protect confidential and proprietary information, which should help ensure that the Routing Service Provider does not misuse routing information obtained from the Exchange. In addition, the rule requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using the Exchange's facilities, and forbids unfair discrimination in connection with the routing services provided by the Exchange.

Until such time as the Exchange enters into a routing agreement with a Routing Service Provider, CBOE would access better priced quotations through the ITS Plan (or its successor).[30] Marketable orders that the system cannot execute at the NBBO (with the exception of IOC orders) are routed to the STOC DPM for manual handling. The STOC DPM may either step up to the NBBO price and execute the order, or route the order via the ITS Plan (or its successor) to the other market(s) disseminating better-priced quotations, as required by the ITS Plan.[31]

The Commission believes that CBOE's order routing rules are reasonably designed to prevent trade-throughs on the STOC System, and therefore are consistent with the Exchange Act and Regulation NMS.

c. Self-Help

Paragraph (b)(1) of Rule 611 permits a trade-through of a protected quotation if the trading center displaying the protected quotation was experiencing a failure, material delay, or malfunction of its systems or equipment when the trade-through occurred. The Commission stated in the Regulation NMS Adopting Release that, "th[is] exception gives trading centers a self-help remedy if another trading center repeatedly fails to provide an immediate response (within one second) to incoming orders attempting to access its quotes."[32] The Commission believes that proposed CBOE Rule 52.13(b), which provides that the Exchange may, subject to certain conditions, bypass the quotations displayed by another trading center if such trading center repeatedly fails to respond within one second to orders attempting to access such trading center's protected quotations, is reasonably designed to allow CBOE to invoke self-help in a manner consistent with Rule 611 of Regulation NMS and is, therefore, consistent with the Act.

d. Outbound ISOs and the Identification of Permissible Trade-Throughs

In Amendment No. 1, the Exchange proposed a new rule governing generation of outbound ISOs by the STOC System. The system would generate an outbound ISO to any away trading center displaying a protected quotation simultaneously with the execution of a transaction on the Exchange at a price inferior to a protected quotation, unless a specified exception to the Order Protection Rule applies.[33] The proposed rule also requires the Exchange to identify all trades executed pursuant to an exception to or exemption from the Order Protection Rule in accordance with specifications approved by the operating committee of the relevant national market system plan.[34] The provision of the rule requiring identification of trade-through exceptions is designed to create uniformity across the markets regarding how permissible trade-throughs are reported, and should create more transparency for investors and regulators. The Commission believes, therefore, that proposed CBOE Rule 52.7 furthers the public interest and is consistent with the Act.

3. Access Rule

Paragraph (a) of the Access Rule[35] prohibits a national securities exchange from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the exchange to a quotation in an NMS stock displayed through the SRO quoting facility. The Commission believes that the STOC rules and the STOC System have been reasonably designed to meet the standard in paragraph (a) of the Access Rule. In addition, paragraph (d) of the Access Rule[36] requires a national securities exchange to establish, maintain, and enforce rules that, among other things, require its members reasonably to avoid displaying quotations that lock or cross any protected quotation in an NMS stock and prohibit its members from engaging in a pattern or practice of doing so. Proposed CBOE Rule 52.12 requires members of the Exchange to reasonably avoid displaying, and to not engage in a practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan, subject to certain limited exceptions. The Commission believes that this rule is consistent with Rule 610(d) of Regulation NMS.

B. Accelerated Approval of Amendment No. 1

Pursuant to Section 19(b)(2) of the Act,[37] the Commission finds good cause for approving the amended proposal prior to the thirtieth day after the publication of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange revised the proposal: (1) To add proposed CBOE Rule 52.7, relating to the generation of outbound ISOs and the identification of trade-through exceptions; (2) to clarify that, until the Exchange's automated

[28] However, if an order is received through the communications network operated pursuant to the ITS Plan or any successor to the ITS Plan, the order would trade only at a single price. *See* proposed CBOE Rule 51.8(n).

[29] The Exchange intends to enter into the routing agreements described in proposed CBOE Rule 52.10 prior to the "Trading Phase Date" of February 5, 2007. *See* Regulation NMS Compliance Date Release.

[30] *See supra* note 17.

[31] *See* CBOE Rule 52.6.

[32] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37535 (June 29, 2005).

[33] *See* proposed CBOE Rule 52.7(a). The permitted exceptions in the Exchange's rule are consistent with those set forth in Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b).

[34] In addition, if a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) and the self-help exception of Rule 611(b)(1), such trade shall be identified as executed pursuant to the intermarket sweep order exception. *See* proposed CBOE Rule 52.7(b).

[35] 17 CFR 242.610(a).

[36] 17 CFR 242.610(d).

[37] 15 U.S.C. 78s(b)(2).

outbound routing capabilities are in place, the STOC System will route certain non-IOC orders to the STOC DPM for manual handling; (3) to clarify proposed CBOE Rule 52.10 regarding the Exchange's planned order routing arrangements; (4) to delete language from CBOE Rule 53.56(b)(6) that allows a STOC DPM who is acting as agent for a customer order that is not executed on the system because there is a better price on another exchange to be on parity with the customer if the customer consents; (5) to delete portions of CBOE Rules 52.1(d) and 53.24(b) relating to the priority of automatically regenerated quotations of STOC market-makers; and (6) to make additional non-substantive changes to the proposed rule text. These changes do not raise any novel or substantive regulatory issues. Therefore, the Commission finds good cause for approving the proposal, with these changes, on an accelerated basis. Doing so will help enable the Exchange to meet the requirements of Regulation NMS in an expeditious manner.

IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it 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–CBOE–2006–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–70. 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. 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–CBOE–2006–70 and should be submitted on or before October 25, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (File No. SR–CBOE–2006–70), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16364 Filed 10–3–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54531; File No. SR–ISE–2006–52]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Block Order Mechanism

September 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to reduce the exposure period for orders entered into the Block Order Mechanism under Rule 716 to three seconds. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

Under ISE Rule 716, members can seek liquidity for a single-sided order of at least fifty contracts (a "block order") by entering such order into the Block Order Mechanism. Currently, upon entry of an order, the Block Order Mechanism gives market participants thirty seconds to respond with contra-side trading interest.[5] The ISE has reduced the exposure period for the other special order mechanisms contained in Rule 716, the Facilitation Mechanism and the Solicited Order Mechanism, to three seconds and has found that this is more than enough time for market participants to respond.

[38] *Id.*

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] At the conclusion of this time period, either an execution occurs automatically, or the order is cancelled. Bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as responses that are priced higher (lower) than the block execution price, are executed at the block execution price. Responses, quotes and non-customer orders at the block execution price participate in the execution of the block order according to the allocation method set forth in ISE Rule 713(e). *See* ISE Rule 716(c).

Because the longer exposure period introduces unnecessary market risk to orders entered into the Block Order Mechanism, the Exchange proposes to reduce the Block Order Mechanism exposure period to three seconds.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[6] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will reduce unnecessary market risk for orders entered into the Block Order Mechanism.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the ISE has requested that the Commission waive the 30-day operative delay. The Commission has previously stated its belief that in an electronic environment—such as that of the ISE options market—reducing the exposure period for orders to three seconds could facilitate the prompt execution of such orders, while providing market participants with an adequate opportunity to compete for them.[11] Thus, the Commission believes that waiving the 30-day operative delay for the instant proposed rule change is consistent with the protection of investors and the public interest. For this reason, the Commission designates the proposal to be effective and operative immediately.[12]

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–ISE–2006–52 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2006–52. 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–52 and should be submitted on or before October 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

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[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *Id.*

[11] See, *e.g.*, Securities Exchange Act Release Nos. 52711 (November 1, 2005), 70 FR 67508 (November 7, 2005) (SR–ISE–2004–04); 53384 (February 27, 2006), 71 FR 11280 (March 6, 2006) (SR–PCX–2005–135); and 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (SR–CBOE–2006–09).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54528; File No. SR–ISE–2006–48]

Self-Regulatory Organizations; International Securities Exchange, Inc. (n/k/a International Securities Exchange, LLC); Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Adoption of Rules To Govern Its Electronic Trading System for Equities

September 28, 2006.

I. Introduction

On August 4, 2006, the International Securities Exchange, Inc. (n/k/a International Securities Exchange, LLC) ("ISE" or "Exchange")[1] filed with the

[1] On September 1, 2006, the Exchange adopted a holding company structure by forming a new parent company, International Securities Exchange

Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] to adopt rules to govern its electronic trading system for equity securities. The proposed rule change was published for comment in the **Federal Register** on August 15, 2006.[4] The Commission received no comments on the proposal. On September 27, 2006, the Exchange filed Amendment No. 1 to the proposal.[5] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

II. Summary Description of the Proposal

The Exchange proposes to adopt new rules and amend existing ISE rules to govern the operation of the ISE Stock Exchange, LLC ("ISE Stock Exchange"), a new electronic trading system for equity securities ("System").[6] In addition, the Exchange proposes to apply certain of its options rules to the trading of equity securities on the ISE Stock Exchange. The ISE Stock Exchange will trade equity securities only pursuant to unlisted trading privileges ("UTP").[7]

The System will provide for the electronic execution and display of orders, as well as a midpoint matching feature ("MidPoint Match"). The class of members who will be eligible to trade on the ISE Stock Exchange are electronic access members ("EAMs") of the Exchange whom ISE specifically authorizes to trade on the ISE Stock Exchange ("Equity EAMs"). Orders will be ranked in the System based on price-time priority, regardless of the identity of the entering Equity EAM. Executions will take place automatically and immediately upon order entry if trading interest is available. The System will provide a routing service for orders when trading interest is not present on the ISE Stock Exchange. The ISE Stock Exchange will not have any market makers, only Equity EAMs who will provide liquidity to the ISE Stock Exchange. The ISE Stock Exchange will be an order-driven marketplace.

The proposed rules incorporate the ISE Stock Exchange's compliance with Rule 611 of Regulation NMS[8] by requiring that, for any execution to occur on the ISE Stock Exchange during regular trading hours, the price must be equal to, or better than, any "protected quotation" within the meaning of Regulation NMS ("Protected Quotation"),[9] unless an exception to Rule 611 of Regulation NMS is available.[10] The Exchange proposes to direct to away markets for execution all or a portion of the orders that cannot be executed at the Protected Quotation on the ISE Stock Exchange, and are not cancelled.[11] The proposed rules also incorporate the prohibition in Regulation NMS on locking or crossing Protected Quotations,[12] except in certain circumstances.[13]

The MidPoint Match feature of the System will be a mechanism for trading equity securities in a continuous matching system.[14] Users will enter unpriced orders into MidPoint Match, and MidPoint Match will continuously monitor buy and sell orders in MidPoint Match and, subject to certain limitations discussed more fully below, will execute orders at the midpoint of the NBBO when interest is resident in MidPoint Match on both sides of the market.[15]

A more complete discussion of the features of the ISE Stock Exchange is contained below.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange[16] and, in particular, with the requirements of Section 6(b) of the Act.[17] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5) of the Act[18] in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions

Holdings, Inc. ("Holdings"). As part of the restructuring, International Securities Exchange, Inc. ("ISE Inc."), the registered national securities exchange, merged into a newly formed entity, International Securities Exchange, LLC ("ISE LLC"), a wholly-owned subsidiary of Holdings. ISE LLC continues to conduct the business operations of the exchange and is the successor to the registration of ISE Inc. as a national securities exchange. *See* Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (File No. SR–ISE–2006–04). Holdings is also the parent company of ISE Stock Exchange, LLC, the facility to which the proposed rule change relates. All references herein to "ISE" or the "Exchange" refer to ISE Inc. or ISE LLC, as appropriate.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 54287 (August 8, 2006), 71 FR 46947.

[5] In Amendment No. 1, the Exchange: (i) Amended proposed ISE Rule 2110 (Minimum Price Variation) to conform with the language of Rule 612 of Regulation NMS; (ii) amended proposed ISE Rule 2106 (Opening Process) to reflect all order types that cannot participate in the opening process and to add a provision addressing closing procedures; (iii) changed the term "partial round lot" to "mixed lots" to correspond to the current industry term and clarified corresponding proposed ISE Rule 2105 (Order Entry); (iv) amended proposed ISE Rule 2107 (Priority and Execution of Orders) to address how orders entered into the ISE Stock Exchange will interact with MidPoint Match orders; (v) amended proposed ISE Rule 2118 (Trade Modifiers) to incorporate applicable requirements of Rule 611 of Regulation NMS; (vi) made clarifying changes to the clearing requirements; (vii) made conforming changes to the proposed rules to match, where applicable, the rules filed under the Form PILOT relating to MidPoint Match; (viii) added proposed ISE Rule 2120 (Taking or Supplying Securities); (ix) clarified routing procedures before and after February 5, 2007, the Regulation NMS "Trading Phase Date"; and (x) made other minor clarifying changes to various proposed rules. The complete text of Amendment No. 1 is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*), at the Commission's Public Reference Room, and at the Exchange.

[6] On September 1, 2006, the Commission approved a proposed rule change establishing the ISE Stock Exchange as a "facility," as defined in Section 3(a)(2) of the Act, of the Exchange. *See* Securities Exchange Act Release No. 54399, 71 FR 53728 (September 12, 2006) (SR–ISE–2006–45).

[7] While the proposed rules would allow the ISE Stock Exchange to trade common stock, Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Trust Issued Receipts including those based on Investment Shares, and Investment Company Units by either listing and/or trading pursuant to UTP, the Commission notes that, to list equity securities, the Exchange would need to amend its rules to comply with Rule 10A–3 under the Act, 17 CFR 240.10A–3, and to incorporate qualitative listing criteria by filing a proposed rule change under Section 19(b)(1) of the Act.

[8] 17 CFR 242.611.

[9] *See* proposed ISE Rule 2100(c)(16).

[10] *See* proposed ISE Rule 2107(c).

[11] *See* proposed ISE Rule 2107(d).

[12] 17 CFR 242.610(d).

[13] *See* proposed ISE Rule 2112.

[14] *See* proposed ISE Rule 2129.

[15] The Exchange previously filed with the Commission pursuant to Rule 19b–5 under the Act, 17 CFR 240.19b–5, a Form PILOT setting forth rules governing MidPoint Match. *See* PILOT–ISE–2006–01 (July 28, 2006). ISE commenced operation of MidPoint Match on September 8, 2006. The rules filed under the Form PILOT, with minor modifications, were incorporated into the Exchange's proposed rule change, as amended. Upon the Commission's approval of the proposed rule change, the rules relating to the fully displayed market will be effective, but will not be operative until ISE launches its fully displayed market, and the rules pertaining to MidPoint Match that are incorporated into the proposed rule change will be operative immediately. Prior to launch of the fully displayed market, the Exchange intends to file a proposed rule change with the Commission to indicate that the rules relating to the fully displayed market have become operative. The Exchange represents that it intends to commence trading in the displayed market prior to February 5, 2007, the Regulation NMS "Trading Phase Date."

[16] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

A. Access to ISE Stock Exchange

The class of members who will be eligible to trade on the ISE Stock Exchange are Equity EAMs. All current EAMs of the Exchange are eligible to become Equity EAMs. Any broker-dealer that is not currently an EAM can become an Equity EAM first by applying for EAM status through the existing membership process and then by connecting to the ISE Stock Exchange through the FIX or CMS protocols and paying any applicable fees. Such fees will be the same for current and new EAMs seeking to become Equity EAMs. The Commission believes that the proposed definition of, and the procedures relating to authorization of an EAM to act as, an Equity EAM are consistent with the Act.

B. Order Types

The following order types will be eligible for execution on the ISE Stock Exchange, including MidPoint Match orders, which are described below.

Market Orders: A Market Order is an order to buy or sell a stated amount of a security that is to be executed immediately and automatically at the best available price(s) [19] when the order reaches the ISE Stock Exchange, to the greatest extent possible without causing an execution during regular trading hours at a price that is inferior to a Protected Quotation ("Trade-Through"). Any unexecuted shares of a Market Order may be routed in whole or in part to other Trading Centers [20] with Protected Quotations.

Limit Orders: A Limit Order is a one-sided order to buy or sell a stated quantity of a security at a specified price or better. The types of Limit Orders that the ISE Stock Exchange will accept include Reserve Orders, Immediate-or-Cancel ("IOC") Orders, Intermarket Sweep Orders ("ISOs"), Fill-or-Kill ("FOK") Orders, Not Routable Orders, and Post Only Orders.

Reserve Orders will have a portion of their size displayed, while a reserve portion of their size at the same price will not be displayed. The reserve size will be used to refresh the displayed size when the displayed size is executed in full. When the displayed size of a Reserve Order is replenished from the reserve size, the displayed order is considered newly entered for purposes of time priority.

IOC Orders will be executed immediately and automatically against existing orders on the System at the best available price(s) to the greatest extent possible without causing a Trade-Through, and any unexecuted balance will be cancelled. Any Equity EAM may use an IOC Order to immediately and automatically execute against the full size of the displayed quotation on the System (including any undisplayed or reserve size available at the price of the displayed quotation).

With respect to orders received by the ISE Stock Exchange, ISOs are orders to be executed in whole or in part upon receipt against existing orders on the System at their executable price, in order of their ranking and without regard to better-priced quotations displayed at other Trading Centers, and if not so executed are to be cancelled. With respect to orders sent by the ISE Stock Exchange to other Trading Centers, ISOs are orders to be executed in whole or in part at such Trading Centers without regard to better-priced quotations displayed at other Trading Centers, and if not so executed are to be cancelled.[21]

FOK Orders are to be executed in their entirety or cancelled upon receipt. Not Routable Orders are to be executed in whole or in part upon receipt, and if not fully executed, displayed on the ISE Stock Exchange, as long as the order would not be executable against a Protected Quotation. Post Only Orders are to be displayed on the ISE Stock Exchange upon receipt or cancelled if they are executable upon entry, either on the ISE Stock Exchange or at another Trading Center.

Pegged Orders: Pegged Orders are Limit Orders to buy or sell a stated amount of a security at a displayed price set to track the current NBBO. The tracking of the relevant NBBO for Pegged Orders will occur on a real-time basis. If the calculated price for the Pegged Order would exceed its limit price, it will no longer track the NBBO and will remain displayed at its limit price.

The Commission believes that these order types are appropriate in the context of the trading services proposed to be offered by the ISE Stock Exchange. In addition, these order types should help provide market participants with flexibility in executing transactions that meet the specific requirements of the order type.

C. Operating Hours and Opening Process

The ISE Stock Exchange will operate during regular trading hours.[22] The System will accept orders each day prior to the opening.[23] The ISE Stock Exchange will open based upon the opening of the primary market for a security.[24] When the primary market is either the NYSE or the Amex, the opening trade will be executed at the midpoint of the first reported NBBO subsequent to a reported trade on the primary market. When the primary market is Nasdaq, the opening trade will be executed at the midpoint of the first reported NBBO. All orders eligible to trade at the midpoint will be processed in time sequence, beginning with the oldest order. Matches will occur until there is no remaining volume or there is an imbalance of orders. Following the opening execution process in an individual security, all orders remaining will be executed in accordance with the proposed ISE rules, as more fully discussed in the following section. All unexecuted orders will be displayed on the order book, cancelled, or routed to other Trading Centers in accordance with the proposed rules.

The Commission believes that the proposed rules relating to the System's operating hours and opening procedures are consistent with the Act.

D. Order Execution and Priority

Once the opening occurs for individual securities, the ISE Stock Exchange will operate during regular trading hours. All orders will be ranked automatically by the ISE Stock Exchange following price-time priority as soon they are entered in the order book. Orders are ranked beginning with the highest priced orders to buy and the lowest priced orders to sell.[25] For the

[19] The "best available price" means the highest bid price and the lowest offer price, including orders with executable undisplayed interest to buy or sell and interest to buy or sell that may exist in MidPoint Match. *See* proposed ISE Rule 2100(c)(3).

[20] A "Trading Center" is a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. *See* proposed ISE Rule 2100(c)(20).

[21] The Exchange intends the ISO order type to be equivalent to the "intermarket sweep order" defined in Rule 600(b)(30) of Regulation NMS under the Act, 17 CFR 242.600(b)(30).

[22] For common stock, the hours of business for the ISE Stock Exchange will be 9:30 a.m. until 4 p.m. (ET). For securities other than common stock, the hours of business are set forth in proposed ISE Rules 2123 through 2127. *See* proposed ISE Rule 2102.

[23] All order types other than Stop, Stop Limit, No MPM, Post Only, FOK, and IOC may participate in the opening transaction.

[24] Proposed ISE Rule 2106(c) defines the primary market as the listing market for a security. If a security is traded on both the NYSE and the Amex, the primary market would be considered the NYSE. If a security is listed on both the NYSE and Nasdaq, the NYSE would be considered the primary market.

[25] *See* proposed ISE Rule 2107.

purposes of ranking, the System will use the price at which the order is displayed. Within each price, orders will be ranked in time priority based on the time that an order is displayed or "updated" at that price, except that the undisplayed portions of Reserve Orders will be ranked after all other orders and displayed portions of Reserve Orders at the same price. When the displayed size of a Reserve Order is replenished from the reserve size, the displayed order is considered newly entered for the purposes of time priority.

In addition, all orders will be available for price improvement at the midpoint of the NBBO if contra-side interest exists in MidPoint Match, unless the order is marked "No MPM." [26] Except as indicated below, incoming orders will be executed at or within the NBBO. The Commission believes that the proposed rules relating to order priority and order execution are consistent with the Act.[27]

E. Compliance With Regulation NMS Under the Act

The System is designed to automatically prevent Trade-Throughs of Protected Quotations. The System will accomplish this in two principal ways: (i) By providing outbound routing for those orders that will be available to route; and (ii) by displaying orders at prices that would not cause a Trade-Through when executed. Additionally, the System will take advantage of various exceptions to Rule 611 of Regulation NMS under the Act.[28] The Exchange has proposed to adopt an exception ("self-help") to allow for the System to Trade-Through a Protected Quotation displayed by a Trading Center that is experiencing a failure, material delay, or malfunction of its systems or equipment. If another Trading Center repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations, the System may bypass those Protected Quotations by: (i) Notifying the non-responding Trading Center immediately after (or at the same time as) electing self-help; and (ii) assessing whether the cause of the problem lies with its own systems and, if so, taking immediate steps to resolve the problem. ISOs may, by definition, trade at a price inferior to a Protected Quotation. In addition, transactions may be executed at a time when the Protected Quotations are crossed.

The ISE Stock Exchange will not intentionally lock or cross any Protected Quotations on another Trading Center,[29] except in certain circumstances. For instance, the System may lock or cross a Protected Quotation: (i) When a Protected Bid is higher than a Protected Offer;[30] or (ii) if the locking or crossing quotation is an automated quotation and an ISO has simultaneously been routed to execute against the full displayed size of the locked or crossed Protected Quotation.

The Commission believes that the proposed rule change is consistent with the requirements of Rule 610(d) and Rule 611 of Regulation NMS.

F. Order Routing

The ISE Stock Exchange will offer a routing service for Equity EAMs, when it does not have interest equal to or better than the Protected Bid or Protected Offer.[31] Certain order types, including Market Orders and Limit Orders, are eligible to be routed.[32] To be eligible to enter routable orders into the ISE Stock Exchange, Equity EAMs must, among other things, enter into a Routing Agreement with the outbound routing facility of the Exchange.[33]

The System will accept the following orders to be handled on the ISE Stock Exchange, without routing to another Trading Center: IOC Orders, FOK Orders, Not Routable Orders, and Post Only Orders.[34] No Equity EAM may enter any other type of order unless it has entered into a Routing Agreement with the outbound routing facility of the Exchange.[35]

Market Orders and Routable Limit Orders Executable on the ISE Stock Exchange. For orders that are routable, an IOC or ISO will automatically be sent to one or more Trading Centers with a Protected Quotation that is better than the ISE Stock Exchange quote for the lesser of the full displayed size of the Protected Quotation or the balance of the order. Any additional balance of the order will be executed on the ISE Stock Exchange simultaneously. If the market is crossed, the order will be handled as described below.

Routable Limit Orders Unexecutable on the ISE Stock Exchange. If display of a Limit Order (or any balance thereof) on the ISE Stock Exchange would lock or cross a Protected Quotation, an ISO will automatically be sent to one or more Trading Centers with a Protected Quotation that would be locked or crossed by the display of the order for up to the full displayed size of the Protected Quotation. Any additional balance of the order will be displayed on the ISE Stock Exchange immediately.

Market Orders Unexecutable on the ISE Stock Exchange. An IOC will automatically be sent to one or more Trading Centers with a Protected Quotation for the full size of the Market Order that is not executable on the ISE Stock Exchange.

The Commission finds that the proposed rules governing the routing of orders to other Trading Centers are consistent with the Act.

G. Outbound Routing Facility

In connection with the proposed trading rules described above, the Exchange intends to enter into a contractual relationship with a broker-dealer that will function solely as the outbound routing facility ("ORF") of the Exchange. The ORF will be a member of both the National Association of Securities Dealers, Inc. ("NASD") and

[26] Equity EAMs can choose to place orders into MidPoint Match or into the displayed market. Orders placed into the displayed market will be eligible, by default, to interact with MidPoint Match orders for purposes of gaining price improvement. Optionally, orders in the displayed market can bypass MidPoint Match by being marked as No MPM.

[27] Section 11(a) of the Act, 15 U.S.C. 78k(a)(1), prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or an associated person exercises discretion, unless an exception applies. Rule 11a2–2(T) under the Act, 17 CFR 240.11a2–2(T), commonly known as the "effect versus execute" rule, provides exchange members with an exemption from this prohibition. The Exchange represents that, consistent with this rule, the System's time-priority execution parameters will place all participants on the "same footing," and no participant will enjoy any special control over the timing of execution or any special order handling advantages. According to the Exchange, all orders will be transmitted directly to the System by electronic means, and, once submitted, all orders will be executed, displayed, cancelled, or routed automatically by the System, based on established trading rules. The Commission notes that the Exchange would enforce this requirement pursuant to its obligation under Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1), to enforce compliance by its members and persons associated with its members with the Federal securities laws and rules thereunder.

[28] *See* proposed ISE Rule 2107(c).

[29] *See* proposed ISE Rule 2112.

[30] *See* proposed ISE Rule 2100(c)(15).

[31] Prior to February 5, 2007, the Regulation NMS "Trading Phase Date," the ISE Stock Exchange will not execute orders at a price that is inferior to the best bid or offer of other Trading Centers.

[32] *See* proposed ISE Rule 2107(d).

[33] *See* proposed ISE Rule 2105(d). A "Routing Agreement" is an agreement between an Equity EAM and the outbound routing facility of the ISE Stock Exchange, under which the outbound routing facility agrees to act as agent for routing orders of the Equity EAM entered into the ISE Stock Exchange to other market centers or broker-dealers for execution, other than orders excluded by the terms of the Routing Agreement, whenever such routing is required. *See* proposed ISE Rule 2100(c)(18).

[34] *See* proposed ISE Rules 2107(b)(2)(i), (ii), (iii), and (iv), respectively. In addition, MidPoint Match orders would not be routed, because MidPoint Match will execute all trades at the midpoint of the NBBO.

[35] *See* proposed ISE Rule 2105(d)

ISE. The ORF will provide an optional routing service for the Exchange, in which the ORF will route orders from the ISE Stock Exchange to Trading Centers with Protected Quotations through other brokers ("Access Brokers") that are members or participants of those Trading Centers. As an outbound router, the ORF will receive routing instructions from the System, route orders to another Trading Center through an Access Broker, and be responsible for reporting resulting executions back to the System, which in turn will report resulting executions back to the Equity EAM. All orders routed through the ORF will be subject to the Exchange's rules. The ORF would not be able to change the terms of an order or the routing instructions, nor would it have any discretion about where to route an order. The ORF includes the clearing functions that the ORF may perform for trades with respect to orders routed to other Trading Centers. Use of the ORF is optional for Equity EAMs.

The outbound router function of the ORF will operate as a facility (as defined in Section 3(a)(2) of the Act) of the Exchange.[36] As such, the outbound router function of the ORF is subject to the Commission's continuing oversight. In particular, and without limitation, under the Act, the Exchange is responsible for filing with the Commission proposed rule changes and fees relating to the ORF outbound router function, and the ORF is subject to exchange non-discrimination requirements.[37]

Pursuant to Rule 17d–1 under the Act,[38] where a member of the Securities Investor Protection Corporation is a member of more than one self-regulatory organization ("SRO"), the Commission will designate to one of such organizations the responsibility for examining such member for compliance with the applicable financial responsibility rules.[39] The SRO designation by the Commission is referred to as a "Designated Examining Authority" ("DEA"). As noted above, the ORF will apply to become a member organization of the Exchange and a member of the NASD. The NASD is an SRO not affiliated with the Exchange or its affiliates and is a DEA pursuant to Rule 17d–1 under the Act.[40] Furthermore, the Exchange represents that it will enter into a 17d–2 Agreement with the NASD to delegate to the NASD all regulatory oversight and enforcement responsibilities with respect to the ORF pursuant to applicable laws. The Exchange represents that it will submit the 17d–2 Agreement to the Commission under Rule 17d–2 within 90 days of the date of this order.

The Exchange will establish and maintain procedures and internal controls to restrict the flow of confidential and proprietary information between the Exchange and the ORF and any other entity or affiliate of the ORF.[41] The books, records, premises, officers, directors, agents, and employees of the ORF, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Act. The books and records of the ORF, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

The Commission agrees with the Exchange that the ORF's services would qualify it as a "facility" of the Exchange, and, consequently, the operation of the ORF will be subject to Exchange oversight, as well as Commission oversight. The Commission notes that the outbound routing functionality is not the exclusive means for accessing better-priced orders in other market centers should an order not be executable on the ISE Stock Exchange. Accordingly, the ORF's routing services are optional, and an Equity EAM is free to route its orders to other market centers through alternative means. In light of the protections afforded by the conditions discussed above, the Commission believes that the Exchange's outbound routing function, and the rules and procedures governing the ORF, are appropriate and consistent with the Act.

H. MidPoint Match

MidPoint Match is a mechanism of the ISE Stock Exchange for trading common stocks and similar securities in a continuous midpoint matching system.[42] Equity EAMs will be able to enter MidPoint Match orders to buy or sell at the midpoint of the NBBO. Although orders in MidPoint Match will be unpriced, members may specify a boundary price above which they will not buy (or below which they will not sell). The System will continuously monitor buy and sell orders in MidPoint Match and will execute orders at the midpoint of the NBBO as long as the execution does not violate the boundary price on an order.

When entering an order, a member can specify what, if any, information the System should disseminate:

(i) The member can specify that the System not disseminate any information regarding the order ("Standard Order"); or

(ii) The member can specify that the System disseminate that there is a pending order in a particular security, but not identify the side or the size of the order ("Solicitation of Interest" or "SOI").[43]

MidPoint Match will reject an SOI (but not a Standard Order) with a boundary price that is not then currently executable. Upon arrival of an SOI, MidPoint Match will immediately generate a single broadcast internally to all Equity EAMs that have programmed their systems to accept this message announcing the arrival of the order. An Equity EAM entering an SOI may not cancel that SOI for five seconds. In addition, if an SOI is not executed within ten seconds, the SOI will convert into a Standard Order.

Because MidPoint Match will execute all trades at the midpoint of the NBBO, MidPoint Match will never execute a trade outside of the NBBO. In addition, MidPoint Match will not execute a trade if the quotation for a security is "crossed," with the national best bid being greater than the national best offer. In that situation, MidPoint Match will suspend executions, since both buyers and sellers may be able to receive executions in other markets at prices better than the NBBO midpoint. If the quotation is "locked," with the national best bid equaling the national best offer, MidPoint Match will execute all trades at the locked price.

Unless marked otherwise, all incoming orders to the ISE Stock Exchange will be eligible for price improvement at the midpoint of the NBBO if contra-side interest exists in MidPoint Match. As set forth in the proposed rules, incoming orders will be executed at the best available price on the ISE Stock Exchange, which means the highest bid price and the lowest offer price, including undisplayed

[36] 15 U.S.C. 78c(a)(2).

[37] 15 U.S.C. 78f(b)(5).

[38] 17 CFR 240.17d–1.

[39] Pursuant to Rule 17d–1 under the Act, in making such designation the Commission will take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among SROs, and the development of a national market system for the clearance and settlement of securities transactions.

[40] 17 CFR 240.17d–1.

[41] *See* proposed ISE Rule 2108.

[42] *See* proposed ISE Rule 2129.

[43] However, an SOI must be for a minimum of 2000 shares, so users would be aware that the SOI represented interest of at least that size.

orders to buy or sell that may exist in MidPoint Match. Orders marked "No MPM" will not be executed against orders residing in MidPoint Match.

The Commission believes that the order types and execution parameters established in MidPoint Match are consistent with the Act.

I. Anonymity

Except as described below, transactions executed on the ISE Stock Exchange will be processed anonymously.[44] This means that the ISE Stock Exchange transaction reports will indicate the details of the transaction but will not reveal contra-party identities.[45] The Commission notes that post-trade anonymity should not compromise an Equity EAM's ability to settle an erroneous trade, because under proposed ISE Rule 2128, the clearly erroneous execution resolution process is coordinated by the Exchange, without the need for contra parties to know each other's identities.

The Exchange will only reveal the identity of the Equity EAM or the Equity EAM's clearing firm in the following circumstances: (i) For regulatory purposes or to comply with an order of a court or arbitrator; (ii) when the National Securities Clearing Corporation ("NSCC") ceases to act for the Equity EAM or the Equity EAM's clearing firm, and NSCC determines not to guarantee the settlement of the Equity EAM's trades; or (iii) on risk management reports provided to the contra-party of the Equity EAM or Equity EAM's clearing firm each day after 4:00 p.m. that discloses trading activity on an aggregate dollar value basis. Also, the Exchange will reveal to an Equity EAM, no later than the end of the day on the date an anonymous trade was executed, when that Equity EAM submits an order that has executed against an order submitted by that same Equity EAM.

The Commission finds that the Exchange's proposed anonymity provisions are appropriate and consistent with the Act.

J. Clearly Erroneous Executions

Pursuant to proposed ISE Rule 2128, an Equity EAM that receives an execution on an order that was submitted erroneously to the ISE Stock Exchange for its own or a customer account may request that Market Control, along with a member of the regulatory staff, review the transaction under proposed ISE Rule 2128(b) within the time limits described therein. Market Control will review the transaction with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. A member of the regulatory staff will advise and participate in all steps of Market Control's review of the transaction. Based upon this review, Market Control will decline to "break" a disputed transaction if Market Control believes that the transaction under dispute is not clearly erroneous. However, if Market Control determines that the transaction in dispute is clearly erroneous, Market Control will declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, Market Control will seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For purposes of the clearly erroneous rule, the terms of a transaction are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

Market Control may, on its own motion, review transactions on the ISE Stock Exchange that arose during any disruption or malfunction in the use or operation of any electronic communications or trading facilities of the ISE Stock Exchange, or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Each affected Equity EAM will be notified as soon as practicable, and the Equity EAM aggrieved by the action may appeal such action to the Trade Panel.

The Commission believes that proposed ISE Rule 2128 is consistent with the Act because it is reasonably designed to promote fair and orderly markets by setting forth procedures for reviewing and, if necessary, nullifying or adjusting a clearly erroneous trade. The Commission previously has determined that it is consistent with the Act for an exchange to be able to nullify or adjust trades that are clearly erroneous.[46]

K. Miscellaneous Rules

Proposed ISE Rules 2123 (Investment Company Unit), 2124 (Trust Issued Receipts), 2125 (Commodity-Based Trust Shares), 2126 (Currency Trust Shares), and 2127 (Partnership Units) would permit the trading of derivative products on the ISE Stock Exchange. While these proposed ISE rules would allow the ISE Stock Exchange to trade such products by either listing and/or trading pursuant to UTP, the ISE Stock Exchange will only trade these products pursuant to UTP. In order to list such products, the Exchange would first need to seek Commission approval and amend its applicable rules.

Proposed ISE Rule 2117 (Settlement Through Clearing Corporations) adds provisions governing the settlement and clearing of equity securities.

Proposed ISE Rule 2101 (Equity Securities Traded) provides that, if the Exchange trades its own securities, or the securities of an affiliate or any entity that operates and/or owns a trading system or facility of the Exchange, on the ISE Stock Exchange, the Exchange will file a report each quarter with the SEC describing: (i) The Exchange's monitoring of the issuer's compliance with the Exchange's listing standards (in the event the Exchange adopts such listing standards); and (ii) the Exchange's monitoring of the trading of the security. If the Exchange adopts listing standards, an independent accounting firm must annually review the listing standards for the subject security to ensure that the issuer is in compliance with the applicable listing requirements. If the Exchange determines that the subject issuer is non-compliant with any listing standard, the Exchange must file a

[44] *See* proposed ISE Rule 2117.

[45] ISE intends to submit a request for a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b–10 under the Act, 17 CFR 240.10b–10, on behalf of Equity EAMs that execute trades on the ISE Stock Exchange for their customers and a request for no-action relief with respect to the corresponding books and records requirements of Rules 17a–3 and 17a–4 under the Act, 17 CFR 240.17a–3 and 17a–4, respectively. Rule 10b–10, among other things, requires a broker-dealer to disclose to its customers the identity of the party the broker-dealer sold to, or bought from, to fill the customer's order. The ISE Stock Exchange will not routinely reveal the identity of the actual contra-party when the order is executed against another Equity EAM. Therefore, the Equity EAMs will not be able to comply with the contra-party identification requirement of Rule 10b–10. To permit Equity EAMs to utilize the ISE Stock Exchange without violating Rule 10b–10, the Exchange is seeking an exemption, on behalf of such Equity EAMs, from the contra-party identification requirement. Additionally, the Exchange has asked the Commission not to recommend enforcement action for violations of the corresponding books and records requirements of Rules 17a–3 and 17a–4 if, in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange's retention of the identities of Equity EAMs that execute anonymous trades on the ISE Stock Exchange. The Exchange represents that it will not commence operation of the displayed market unless the Exchange receives an exemption from Rule 10b–10 with respect to that market.

[46] *See, e.g.*, NYSE Arca Equities Rule 7.10 (Clearly Erroneous Executions) and Nasdaq Rule 11890 (Clearly Erroneous Transactions).

report with the Commission at the same time that the Exchange notifies the issuer of its non-compliance.

The following Rules have been incorporated from the Exchange's options rules: ISE Rule 100 (Definitions) is being expanded to include equities in the following definitions: Bid, clearing corporation, offer and order; ISE Rule 500 (Designation of Securities) is being amended to accommodate for the newly adopted rules in Chapter 21; and ISE Rules 702 and 703 (Trading Halts and Trading Halts Due to Extraordinary Market Volatility, respectively) are being amended to account for halting trading in equity securities.[47]

The Commission finds that these various proposed ISE rules are consistent with the Act.

L. Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment No. 1 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[48]

In Amendment No. 1, the Exchange amended proposed ISE Rule 2110 (Minimum Price Variation) to conform with the language of Rule 612 of Regulation NMS and amended proposed ISE Rule 2118 (Trade Modifiers) to incorporate applicable requirements of Rule 611 of Regulation NMS. The Exchange also amended proposed Rule 2106 (Opening Process) to reflect that Stop Orders, Stop Limit Orders, No MPM Orders, Post Only Orders, FOK Orders and IOC Orders cannot participate in the opening process and to add a provision that the System would cease matching orders in a security upon the close of the primary market for that security. In addition, the Exchange changed the term "partial round lot" to "mixed lots" to correspond to the current industry term and clarified corresponding proposed ISE Rule 2105 (Order Entry). The Exchange also added proposed ISE Rule 2120 (Taking or Supplying Securities), which governs situations in which an Equity EAM can, upon receipt of a customer order, take or supply securities named in the order on behalf of itself or related parties.

In Amendment No. 1, the Exchange made certain revisions to the proposed rules to provide for the interaction of MidPoint Match orders with other orders entered into the ISE Stock Exchange, as described more fully above. The Exchange also revised the text of proposed ISE Rule 2107(d) to clarify that, prior to February 5, 2007, the ISE Stock Exchange will not trade through the best bid or offer of other Trading Centers, while on and after February 5, 2007, the ISE Stock Exchange will not trade through a Protected Quotation. Finally, the Exchange made clarifying changes to the clearing requirements and other proposed rules and made changes to the proposed rules to conform them to the rules filed with the Commission on the Form PILOT relating to MidPoint Match.[49]

The Commission notes that Amendment No. 1 is intended to clarify various provisions of the Exchange's proposed rules. The Commission believes that Amendment No. 1 proposes revisions that are non-substantive in nature and do not raise novel issues, and that Amendment No. 1 is consistent with the Act. Therefore, the Commission finds good cause to accelerate approval of Amendment No. 1, pursuant to Section 19(b)(2) of the Act.[50]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–48 on the subject line.

Paper Comments

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

All submissions should refer to Amendment No. 1 to File No. SR-ISE–2006–48. 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. Copies of such filing will also 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 Amendment No. 1 to File No. SR–SE–2006–48 and should be submitted on or before October 25, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[51] that the proposed rule change (SR–ISE–2006–48) be, and it hereby is, approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Nancy M. Morris,

Secretary.

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[47] In addition, the Exchange proposes to apply certain of its options rules to the trading of equity securities on the ISE Stock Exchange, as set forth in Appendix A to proposed Chapter 21 of the ISE rules.

[48] 15 U.S.C. 78s(b)(2).

[49] *See supra* note 15.

[50] 15 U.S.C. 78s(b)(2).

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54514; File No. SR–OCC–2006–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Expiration Date Exercise Procedures

September 26, 2006.

I. Introduction

On April 6, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2006–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice

[1] 15 U.S.C. 78s(b)(1).

of the proposal was published in the **Federal Register** on August 18, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will amend OCC Rule 805, Expiration Date Exercise Procedure, to reduce the threshold amounts used to determine which equity options are in the money for purposes of "exercise by exception" processing. A conforming change would also be made to OCC Rule 1106, Open Positions, which concerns the treatment of open positions following the suspension of a clearing member.

OCC has for years maintained an "exercise by exception" procedure. Under that procedure, options that are in the money at expiration by more than a specified threshold amount are exercised automatically unless the clearing member carrying the position instructs OCC otherwise. Equity options are determined to be in the money or not in the money based on the difference between the exercise price and the closing price of the underlying equity interest on the last trading day before expiration. In September 2004, in order to streamline expiration processing, OCC reduced the threshold amounts from $.75 to $.25 for equity options in a clearing member's customers' account and from $.25 to $.15 for equity options in any other account (*i.e.*, firm and market makers' accounts).[3] The September 2004 change, which was implemented at the request of the OCC Roundtable,[4] immediately yielded significant benefits to both OCC and clearing members as evidenced by the fact that the time for submitting exercise instructions was reduced by one to three hours on an average expiration weekend.

Increasing options volumes in 2004 and 2005 prompted the OCC Roundtable to review the threshold amounts used for equity options in an effort to further reduce operational risks and improve expiration processing. Initially, the OCC Roundtable proposed that the threshold amount for all account types be set at $.01, but an OCC survey of clearing members found that while 65% of responding clearing members supported such a change, 35% were against it. A second OCC survey determined that 75% of responding clearing members were in favor of and 25% were opposed to changing the threshold amount change to $.05 for all account types. The OCC Roundtable then requested that OCC establish $.05 as the threshold amount applicable to equity options exercises for all account types.

In response to this request, OCC analyzed equity options exercise information from the June 2004 through December 2005 expirations. OCC analysis determined from its members that 70% of equity option contracts carried in clearing members' customers' accounts that were in the money by amounts of $.05 to $.24 (*i.e.*, the proposed change to the "in-the-money" amount represented by the proposed threshold change) were exercised. OCC analysis also determined from its members that exercise activity in other account types supported the proposed threshold amount change.

OCC surveyed all clearing members to obtain their views and comments on the proposed change to $.05 as the threshold amount for equity options for all account types. Survey results demonstrated strong support across the membership for the change. Eighty-seven clearing members responded to the survey with sixty-five clearing members (75%) being in favor of the threshold change and 22 clearing members (25%) being opposed.[5] Clearing members supporting the change confirmed the OCC Roundtable's view that such a change would significantly reduce the number of instructions clearing members are currently required to submit at expiration and thereby would shorten the time frame for completing their instructions to OCC.

OCC contacted each firm that expressed opposition to the $.05 threshold amount change. These firms are generally midsize to small retail clearing members. Their opposition to the change reflected their principal concern that they would have to submit more "do not exercise" instructions. Some indicated concerns about the need to educate customers and about the possibility that commission costs could make an exercise unprofitable.[6] However, all of these firms indicated that they could adapt to a $.05 threshold amount if it was supported by the majority of clearing members. OCC further reviewed the positions carried by these firms and determined that, on average, they generally carry positions in fewer than 10 expiring series per expiration that are below the current threshold amount of $.25. This review led OCC to conclude that the threshold amount change to $.05 would result in only a slight increase in processing time for these firms and that they would not be unduly burdened by its implementation.

OCC's survey of clearing members also asked firms to provide an estimate of the time they would need to accommodate the threshold change based upon supplied time frames (e.g., 0–3 months or 4–6 months). The majority of firms indicated that they could complete the necessary systems development and customer notifications within six months. OCC contacted every firm that commented on the proposed time frames, and all expressed the view that their efforts would be completed in the six month time period.

The OCC Roundtable has recommended that this change be implemented for the October 2006 expiration. Therefore, OCC requests that the Commission approve the proposed rule change with an effective date of October 1, 2006, and that the Commission authorize OCC to implement the threshold change thereafter based upon its assessment of clearing member readiness. OCC would provide at least ten days advance notice to clearing members of the effective date for the new threshold amounts by information memoranda and by other forms of electronic notice such as e-mail. Additionally, OCC would allow clearing members additional time to complete preparations for the threshold change if necessary.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] OCC Rule 805 is based on the assumption that when an option is in-the-money by at least a minimum fixed threshold level, most OCC members and their customers would choose to exercise the option. The rule has the effect, therefore, of reducing the number of exercise instructions that must be submitted to and processed by OCC. As OCC notes in its description of the proposed rule change, if a threshold

[2] Securities Exchange Act Release No. 54306, (August 11, 2006), 71 FR 47853.

[3] Securities Exchange Act Release No. 50178 (August 10, 2004), 69 FR 51343 (August 18, 2004) [File No. SR–OCC–2004–04].

[4] The OCC Roundtable is an OCC sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The OCC Roundtable considers operational improvements that may be made to increase efficiencies and lower costs in the options industry.

[5] OCC contacted clearing members that did not respond to its survey. These firms expressed no opinion on the matter.

[6] As noted, clearing members are able to instruct OCC not to exercise an expiring equity option.

[7] 15 U.S.C. 78q–1(b)(3)(F).

amount is set too low, the result could be that some members would have to submit a greater number of "do not exercise" instructions than they would have to submit if the threshold amount was set at a higher amount. However, the Commission is satisfied that by consulting with an industry advisory group, by surveying its clearing members, and by its analysis, OCC has made a reasoned determination in deciding to set the threshold amount for equity options in all account types at $.05. Furthermore, we note that OCC consulted with its clearing members to ensure that even those that did not actively support the proposed rule change would not be adversely affected in a significant manner by the new threshold amount. Accordingly, because the proposed rule change is designed to reduce the amount of processing required for in-the-money equity options, we find that it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16332 Filed 10–3–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Notice of NMTC Pilot Loan Program

AGENCY: U.S. Small Business Administration ("SBA").

ACTION: Notice.

SUMMARY: SBA is creating the New Markets Tax Credit (NMTC) Pilot Loan Program. Under this program, certain Community Development Entities will be able to purchase a participation interest in up to 90% of a SBAExpress or CommunityExpress Section 7(a) guaranteed business loan as part of their investment in low-income communities under the New Markets Tax Credit Program administered by the U.S. Department of Treasury. SBA will use its authority under 13 CFR 120.3 to waive section 120.432(a) of SBA regulations for this pilot program.

DATES: *Effective date:* The NMTC Pilot Loan Program will take effect on November 3, 2006.

Expiration date: The NMTC Loan Pilot Program will expire on September 30, 2011, unless extended by SBA.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Loan Programs Division at *james.hammersley@sba.gov.*

SUPPLEMENTARY INFORMATION:

New Markets Tax Credit Program

The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in entities designated as Community Development Entities (CDEs) by the U.S. Department of Treasury's Community Development Financial Institutions (CDFI) Fund. Substantially all of the qualified equity investment must in turn be used by the CDE to make "qualified low-income community investments," as defined in § 45D(d)(1) of the IRS Tax Code ("QLCI"), which includes a loan made to a "qualified active low-income community business," as defined in § 45(d)(2) of the IRS Tax Code ("QLCI loans"). The credit provided to the investor totals 39% of the investment made by that investor, which may claim the credit against taxable income over a seven-year credit allowance period. In each of the first three years, the investor may claim five percent of the total amount of the NMTC; in the final four years, the investor may claim six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

NMTCs are allocated annually by the CDFI Fund to CDEs under a competitive application process. These CDEs then offer the credits to taxable investors in exchange for stock or a capital interest in the CDEs. To qualify as a CDE, an entity must be a domestic corporation or partnership that: (1) Has a mission of serving, or providing investment capital for, low-income communities or low-income persons; (2) maintains accountability to residents of low-income communities through their representation on a governing board of or advisory board to the entity; and (3) has been certified as a CDE by the CDFI Fund.

Throughout the life of the NMTC Program, the CDFI Fund is authorized to allocate up to $16 billion in NMTCs to CDEs. To date, the CDFI Fund has conducted four rounds of allocations and issued 233 awards totaling $12.1 billion in allocation authority. The CDFI Fund plans to release its fifth annual NMTC Program Notice of Allocation Availability (NOAA) on December 1, 2006. This NOAA will invite CDEs to compete for NMTC allocations in support of an aggregate amount of $3.9 billion in qualified equity investments in CDEs.

More information about the NMTC program, including the applicable statutes and regulations, is available at the CDFI Fund's Web site at: *http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5.*

SBA's NMTC Pilot Loan Program

SBA will implement a NMTC Pilot Loan Program on the effective date of this Notice. The pilot will encourage lenders, as defined in 13 CFR 120.10 ("Lenders"), that participate in SBA's 7(a) guaranteed loan program to increase the amount of credit, equity and financial services they provide to entrepreneurs and small businesses located in urban and rural distressed communities ("new markets"), and support the President's domestic economic priority of stimulating growth, investment and jobs in new markets, by increasing SBA's support for the NMTC program. New markets are "low-income communities" as defined in § 45D(e) of the IRS Tax Code.

As part of the pilot, SBA will use its authority under 13 CFR 120.3 to waive the regulation that states, "A Lender may not sell any of its interest in a 7(a) loan to a nonparticipating Lender." 13 CFR 120.432(a). This regulation requires that any holder of any portion of an SBA-guaranteed 7(a) loan, as defined in 13 CFR 120.1 and 120.2(a) ("7(a) loan"), other than through a sale in the secondary market, must be a Lender. Waiver of this rule is necessary to allow CDEs that are not also Lenders to hold 7(a) loans. Allowing CDEs to purchase and hold a portion of a 7(a) loan will enable CDEs with NMTC allocations to attract additional participation from Lenders to provide loans, as well as equity financing and financial services to entrepreneurs and small businesses in new markets. Under the pilot, only CDEs holding a NMTC allocation awarded by the CDFI Fund will be allowed to purchase portions of 7(a) loans.

Through the pilot, SBA plans to test a process which permits CDEs to purchase a participation interest in 7(a) loans made by Lenders under either the SBAExpress or CommunityExpress programs, as a means of providing

[8] 17 CFR 200.30–3(a)(12).

additional financing to businesses located in new markets. The CDEs would bring additional funds to various underserved business communities located in new markets. SBA hopes that such CDEs will also provide a package of services to borrowers, including mentoring, coaching and counseling to these businesses.

Under SBA's SBAExpress loan program, a Lender approved by SBA to make such loans makes a 7(a) loan to a small business using the Lender's own processes, procedures, and forms. Certain types of loans are not eligible for the SBAExpress loan program. The maximum loan amount is $350,000, and the maximum SBA guaranty is 50% of the loan amount. More information about the SBAExpress program is available at: *http://www.sba.gov/financing/lendinvest/sbaexpress.html,* or from any SBA district office. Although the maximum size of an SBAExpress loan is $350,000, SBAExpress loans that are larger than $150,000 will not be eligible for the NMTC Pilot Loan Program.

Under SBA's CommunityExpress program, a Lender approved by SBA to make such loans makes a 7(a) loan to a small business using Lender's own processes, procedures, and forms. Borrowers must receive pre- and post-loan closing technical and management assistance from local non-profit providers and/or from the Lender, with that assistance coordinated, arranged and, when necessary, paid for by the Lender. Certain types of loans are not eligible for the CommunityExpress program. The maximum loan amount is $250,000, and the SBA guaranty is up to 85% of the loan amount for loans of $150,000 or less. More information about the CommunityExpress program is available at: *http://www.sba.gov/financing/lendinvest/comexpress.html.* or from any SBA District Office. Although the maximum size of a CommunityExpress loan is $250,000, CommunityExpress loans that are larger than $150,000 will not be eligible for the NMTC Pilot Loan Program.

Waiver

Pursuant to 13 CFR 120.3, I am hereby waiving the requirement in 13 CFR 120.432(a) on sales of participating interests in 7(a) loans to allow lenders to sell participating interests in 7(a) loans to CDEs. This waiver is needed in order for the NMTC Pilot Loan Program to function.

Beginning on the effective date of the NMTC Program, CDEs that hold an NMTC allocation may acquire, hold and assign a portion of an eligible SBAExpress or CommunityExpress 7(a) loan notwithstanding the prohibition in 13 CFR 120.432(a).

In addition to the waiver of this regulation, SBA is implementing the following restrictions on Lenders and on the sale of 7(a) loans under this pilot:

(a) Only new SBAExpress and CommunityExpress 7(a) loans made after the effective date of the pilot are eligible for the pilot.

(b) Lenders must sign a Supplemental Lender Program Participation Agreement for the NMTC Pilot Loan Program in order to participate in this program.

(c) The maximum loan size eligible for the pilot is $150,000.

(d) Only 7(a) loans held in the portfolio of the originating Lender and made after the effective date of the pilot are eligible; 7(a) loans sold on the secondary market are not eligible.

(e) The originating Lender must perform the initial underwriting for the 7(a) loan, close the 7(a) loan, and retain all servicing responsibility for the 7(a) loan even after the Lender sells participation interests in such loan to CDEs, and perform liquidation of the loan unless it is not required to do so by SBA.

(f) The originating Lender must retain at least 10% of the principal balance of the 7(a) loan, excluding any premium amount paid, throughout the entire term of the loan. The 10% of any loan retained by the Lender must be a portion of the unguaranteed interest. The Lender must continue to administer the loans during their entire term and remains responsible for all SBA requirements and fees.

(g) A participation agreement, in a form that is acceptable to SBA, must be used by the originating Lender when a participation interest in a 7(a) loan is sold to a CDE and an agreement for assignment of a CDE-held participation interest, in a form that is acceptable to SBA, must be used by the CDE for all subsequent transfers of a participation interest.

(h) CDEs purchasing any portion of a 7(a) loan made under the pilot must have a NMTC allocation.

(i) Purchasers of participation interests in loans will not be permitted any input into the closing, servicing or liquidation of the 7(a) loan, and Lenders must not allow any such input.

(j) A CDE may sell its interest in a 7(a) loan made under the pilot only to either a Lender or to another CDE with a NMTC allocation. The CDE must use an assignment of participation interest form that is acceptable to SBA.

(k) Small Business Investment Companies (SBICs) and New Market Venture Capital Companies (NMVCCs) are prohibited from participating in the pilot.

(l) SBA's waiver of its regulation for purposes of this pilot is based on a requirement that the SBAExpress and CommunityExpress 7(a) loans made by Lenders under this pilot also will qualify as QLCI loans under the IRS Tax Code and regulations governing the NMTC program. The originating Lender is responsible for meeting the eligibility criteria to qualify the 7(a) loan as a QLCI loan. However, CDEs and their investors bear the responsibility of demonstrating to the IRS the eligibility of the loan for NMTCs, and SBA makes no legal or tax representations and assumes no responsibility in this regard.

If SBA does not make this program permanent or extend this pilot program beyond September 30, 2011, the CDE may continue to hold in its portfolio any participation interests in 7(a) loans until the loan is paid in full or the full NMTC is earned, whichever occurs first. If a CDE has fully earned its allocated NMTCs, but the 7(a) loan in which it holds a participation interest is still outstanding, the CDE may transfer its participation interest to either a Lender or to another CDE that holds an NMTC allocation.

Steven C. Preston,

Administrator.

[FR Doc. 06–8497 Filed 10–3–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–32]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 24, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–25049] by any of the following methods:

- *Web site: http://dms.dot.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, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 22, 2006.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25049.
Petitioner: American Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.619
Description of Relief Sought:

To permit American Airlines, Inc. (American), its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which for at least 1 hour before and 1 hour after the estimated time of arrival at the destination airport the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be increased from at least 2 miles to 3 miles. If this exemption is granted, American will maintain at least a Category I approach authorization and the intended destination airport must have at least one operational Category I Instrument Landing System.

[FR Doc. E6–16389 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration, DOT.

TIME AND DATE: October 11, 2006, 8:30 a.m. to 5 p.m.

PLACE: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: An overview of the Unified Carrier Registration Plan and Agreement requirements set forth under section 4305 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and the administrative functioning of the Board. In addition, the Board will continue its work in developing the Unified Carrier Registration Agreement procedures and toward recommending UCRA fees to the Secretary.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, (202) 366–0702, Office of Safety Programs, Federal Motor Carrier Safety Administration, or Mr. Bryan Price, (412) 395–4816, FMCSA Pennsylvania Division Office.

Dated: October 2, 2006.

John H. Hill,

Administrator.

[FR Doc. 06–8514 Filed 10–2–06; 2:13 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25975; Notice 1]

American Honda Motor Co., Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

American Honda Motor Co., Inc. (Honda) has determined that the certification labels for certain Pilot trucks that it produced in 2006 do not comply with S5.3 of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for motor vehicles other than passenger cars." Honda has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Honda has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Honda's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 23,000 model year 2006 and 2007 Honda Pilot trucks produced between February 17, 2006 and August 10, 2006. S5.3.2 of FMVSS No. 120 requires that the vehicles shall show the size designation appropriate for the tires. The noncompliant vehicles have certification labels stating that the rim size is 6 inches, when in fact the rim size is 16 inches. Honda has corrected the problem that caused these errors so that they will not be repeated in future production.

Honda believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Honda presents the following basis for its petition:

> First, most vehicle owners, dealers, and tire service technicians would refer to the vehicles' existing tires and/or the separate Tire Placard to determine the appropriate size for a replacement tire rather than to the Certification Label. Second, if the vehicle owner, dealer or tire service technician read the incorrect rim size on the Certification Label, it would be obvious that a full size vehicle could not use 6 inch wheels. Third, the tire size is listed correctly on the Certification Label. Fourth, the owner's manual contains the correct rim size information. Fifth, the correct rim size is cast into the wheel itself.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on

weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 3, 2006.

Authority (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8).

Issued on: September 29, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–16404 Filed 10–3–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Revised Notice of Funds Availability (NOFA) Inviting Applications for the FY 2007 Funding Round of the Native American CDFI Assistance (NACA) Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES: Applications for the FY 2007 Funding Round of the NACA Program must be received by 5 p.m. ET on January 30, 2007.

EXECUTIVE SUMMARY: On December 21, 2005, the Community Development Financial Institutions Fund (the Fund) published a NOFA in the **Federal Register** (70 FR 75872) in connection with two consecutive funding rounds of the NACA Program: (i) The FY 2006 Funding Round and (ii) the FY 2007 Funding Round. Through this revised NOFA, the Fund announces revised dates for the FY 2007 Funding Round. Because the FY 2006 Funding Round is now complete, this revised NOFA is being issued for the FY 2007 Funding Round only. Parties interested in the FY 2007 Funding Round should review and refer to this revised NOFA, disregarding the December 21, 2005 NOFA, as the FY 2007 Funding Round dates in the December 21, 2005 NOFA have been changed.

I. Funding Opportunity Description

A. Through the NACA Program, the Fund provides Financial Assistance (FA) awards to Community Development Financial Institutions (CDFIs) that have at least 50 percent of their activities directed toward serving Native American, Alaska Native and/or Native Hawaiian communities (Native CDFIs) in order to build their capacity to better address the community development and capital access needs of their Target Market(s) and to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations. Through the NACA Program, the Fund provides Technical Assistance (TA) grants to entities that propose to become Native CDFIs, and to Native organizations, Tribes and Tribal organizations (Sponsoring Entities) that propose to create Native CDFIs, in order to build their capacity to better address the community development and capital access needs of their Target Market(s), to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, or to create Native CDFIs.

B. The regulations governing the CDFI Program, found at 12 CFR part 1805 (the Interim Rule), provide relevant guidance on evaluation criteria and other requirements of the NACA Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. Funding Availability

1. FY 2007 Funding Round

Through the FY 2007 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $3.5 million in appropriated funds through the NACA Program. The Fund reserves the right to award in excess of $3.5 million in appropriated funds to Applicants in the FY 2007 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. Availability of Funds for the FY 2007 Funding Round

Funds for the FY 2007 Funding Round have not yet been appropriated. If funds are not appropriated for the FY 2007 Funding Round, there will not be a FY 2007 Funding Round. Further, it is possible that if funds are appropriated for the FY 2007 Funding Round, the amount of such funds may be less than the amounts set forth above.

B. Types of Awards

An NACA Program Applicant may submit an application for: (i) An FA award; (ii) an FA award and a TA grant; or (iii) a TA grant.

1. FA Awards

The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide an FA award in a form and amount other than that which is requested by an Applicant. The Fund reserves the right, in its sole discretion, to provide an FA award on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. TA Grants

(a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than and in addition to that which are requested by an Applicant.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as business, strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home

buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact, to become certified as a Native CDFI, or to create a Native CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market, and/or to become certified as a Native CDFI or to create a Native CDFI.

C. Notice of Award; Assistance Agreement

Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. Eligible Applicants

The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. CDFI Certification Requirements

For purposes of this NOFA, any Applicant that is a Certified Native CDFI or a Certifiable Native CDFI may apply for a FA award or a FA award and a TA grant. An Applicant that is an Emerging Native CDFI or a Sponsoring Entity may apply for a TA grant only.

(a) *Certified Native CDFIs:* For purposes of this NOFA, a Certified Native CDFI is a Certified CDFI that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must include a "Certification of Material Event Form" with its NACA application by the application deadline, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov.*

Please Note: The Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable Native CDFIs:* For purposes of this NOFA, a Certifiable Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and from which the Fund receives a complete CDFI Certification Application by the applicable deadline of the NACA Program application, evidencing that the Applicant meets all requirements to be certified as a CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov.* Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable Native CDFIs please note: while your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse FA award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging Native CDFIs:* For purposes of this NOFA, an Emerging Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and that demonstrates to the satisfaction of the Fund that it has a reasonable plan to achieve CDFI certification within a reasonable timeframe. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to work toward CDFI certification by a date certain.

(d) *Sponsoring Entities:* For purposes of this NOFA, a Sponsoring Entity is an entity that proposes to create a separate legal entity that will become certified as a CDFI. For purposes of this NOFA, Sponsoring Entities include: (a) A Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; (b) an organization whose primary mission is to serve a Native Community including, but not limited to an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or educational organization, or Chamber of Commerce, and that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community. Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Each Sponsoring Entity that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to create a legal entity by a date certain that will, in turn, seek CDFI certification.

B. Prior Awardees

Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap:* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s) as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that

are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund): (i) Is a prior Fund Awardee or allocatee under any Fund program; and (ii) has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) The Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2006. Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) The Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2006.

6. *Undisbursed balances:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed funds. For purposes of this section, "undisbursed funds" is defined as: (i) In the case of a prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the Awardee. "Undisbursed funds" does not include (i) tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of "undisbursed funds" from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the applicable application deadline of this NOFA.

7. *Exception for Applicants Impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed balances) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a "major disaster area" as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants under this NOFA.

8. *Contact the Fund:* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or de-obligation of any outstanding balance of said prior award(s). All outstanding reports, disbursement or compliance questions should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the

publication of this NOFA through January 26, 2007 (two business days before the application deadline). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. on said date, until after the funding application deadline.

9. *Limitation on Awards:* An Applicant may receive only one award through either the CDFI Program or the NACA Program in the same funding year. An Applicant may apply under both the CDFI Program and the NACA Program but will not be selected for funding under both. A NACA Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives an NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

C. Matching Funds

1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting an FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's Web site for further information.

2. *Matching Funds Requirements for the FY 2007 Funding Round:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for an FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline under this NOFA. Specifically, a NACA Program Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of an FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008.

3. *Matching Funds Terms Defined; Required Documentation.*

(a) "*Matching funds in-hand*" means that the Applicant has actually received the matching funds. If the matching funds are "in-hand," the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are "in-hand," the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) "*Firmly committed matching funds*" means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are "firmly committed," the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as a substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 5 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for an FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a "major disaster area" as declared by the Federal Emergency Management Agency (FEMA) as a result

of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a "severe constraints waiver" (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a "major disaster area" as declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in- hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of an FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in- hand 50 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than 50 percent of matching funds in- hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008. In the case of item (ii) of this paragraph, the NACA Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. Form of Application Submission

Applicants may submit applications under this NOFA either (i) through Grants.gov or (ii) in paper form. Applications sent by facsimile or other form will not be accepted.

B. Grants.gov

In compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund has posted to its Web site, at *http://www.cdfifund.gov*, instructions for accessing and submitting an application through Grants.gov. Applicants are encouraged to start the registration process now at *http://www.Grants.gov*, as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.*

C. Paper Applications

If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application using the CDFI Program Paper Application Submission Form, and the request must be received by 5 p.m. ET on January 12, 2007. The CDFI Program Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–7754. The completed CDFI Program Paper Application Submission Form should be directed to the attention of the Fund's Chief Information Officer and must be sent by facsimile to (202) 622–7754. These are not toll free numbers. Paper applications must be submitted in the format and with the number of copies specified in the application instructions.

D. Application Content Requirements

Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An application that does not include a valid EIN will be deemed incomplete. Incomplete applications will be rejected and returned to the sender. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as DUNS number or EIN information).

E. MyCDFIFund Accounts

All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the "Frequently Asked Questions" link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

F. Application Deadlines; Address for Paper Submissions; Late Delivery

Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:* Applications must be received by the Fund at the address cited below and in accordance with the instructions provided on the Fund's Web site, by 5 p.m. ET on January 30, 2007.

2. *Address for Application Submission:* A complete application must be received at the following address, by January 30, 2007: CDFI Fund Grants Manager, NACA Program, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–6088 (this is not a toll free number). Any documents received in any other office, including the Fund's Washington, DC office, will be rejected and returned to the sender.

3. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected and

returned to the sender. An application, including the required signed signature page, and all required paper attachments, must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

G. Intergovernmental Review

Not applicable.

H. Funding Restrictions

For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. Criteria

The Fund will evaluate each application using numeric scores with respect to the following five sections:

1. *Market Analysis* (25 points): The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a "major disaster" by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a "reception state" by FEMA. The form and content of such special consideration will be further clarified in the NACA Program application.

2. *Business Strategy* (25 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (20 points): The Fund will evaluate (i) the Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that (i) it has a record of success in serving said Investment Area(s) or Targeted Population(s) and (ii) it will expand its operations into a new Investment Area or to serve a new Targeted Population, offer more products or services, or increase the volume of its current business.

4. *Management* (20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (10 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds within the time table set forth above.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. Review and Selection Process

1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application will be rejected as incomplete and returned to

the sender. If an Applicant does not meet eligibility requirements, its application will be rejected and returned to the sender.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance and/or Native community development. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

3. *Application Scoring; Ranking:*

(a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum total score in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2006, in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2005 and FY 2006); (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2003, FY 2004 or FY 2005 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (b) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the NACA Program. All questions regarding outstanding reports or compliance should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 26, 2007. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on January 26, 2007 until after the application deadline.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a "3" or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2007 (for the FY 2007 Funding Round) or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues may be offered a debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by e-mail or fax using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. Notice of Award

The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees,

among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2006, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in such entity's 2005 or 2006 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the applicable application deadline, may not apply for a new award through another NOFA for one CDFI or NACA Program funding round after the date of said deobligation.

B. Assistance Agreement

Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the

funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. Reporting

1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report (not required of Sponsoring Entities); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving FA awards); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the NACA Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's Web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives a FA award must establish a separate bank account for the FA funds and provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for that separate bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 26, 2007. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said date, until after the funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Grants Management Support

If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. Compliance and Monitoring Support

If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a Legal Review," found on the Fund's Web site at *http://www.cdfifund.gov*. Further, if you wish to review the Assistance Agreement form document from a prior funding

round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site should not be relied upon for purposes of this NOFA).

F. Communication with the CDFI Fund

The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *http://www.cdfifund.gov/myCDFI/Help/Help.asp.*

VIII. Information Sessions and Outreach

The Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: September 27, 2006.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E6–16388 Filed 10–3–06; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of additional persons whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, 8 U.S.C. 1182) of December 3, 1999. In addition, OFAC is publishing a change to the listing of two individuals previously designated pursuant to the Foreign Narcotics Kingpin Designation Act.

DATES: The designations by OFAC of additional persons identified in this notice whose property and interests in property have been blocked pursuant to section 804(b) of the Kingpin Act became effective on September 28, 2006. In addition, the change to the listing of two individuals previously designated pursuant to section 804(b) of the Kingpin Act became effective on September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Foreign Narcotics Kingpin Designation Act ("Kingpin Act") became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 28, 2006, OFAC designated five additional entities and fifteen additional individuals whose property and interests in property are blocked pursuant to section 804(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees follows:

Entities

1. PLAYA MAR S.A. DE C.V., Paseo De Los Heroes, Colonia Rio Tijuana 2110, Tijuana, Baja California, Mexico; Entre Via Rapida y Jose Clemente Orozco, Tijuana, Baja California, Mexico; Blvd. Agua Caliente 10440, Colonia Aviacion 22420, Tijuana, Baja California, Mexico; R.F.C. # PMA–910805 (Mexico) [SDNTK]

2. INMOBILIARIA ESPARTA S.A. DE C.V., Avenida Negrete 220 Local 2B, Colonia Zona Central, Tijuana, Baja California, Mexico; R.F.C. # IES–870805 (Mexico) [SDNTK]

3. INMOBILIARIA LA PROVINCIA S.A. DE C.V., Cuauhtemoc 6046 3 Libertad,Tijuana, Baja California, Mexico; R.F.C. # IPR–931014 (Mexico) [SDNTK]

4. INMOBILIARIA ESTADO 29 S.A. DE C.V., Entre Juan Sarabia y Plutarco Elias C., Tijuana, Baja California, Mexico; Ocampo 1860 4, Colonia Zona Central, Tijuana, Baja California, Mexico; R.F.C. # IEV–950628 (Mexico) [SDNTK]

5. INMOBILIARIA TIJUANA COSTA S.A. DE C.V., Agua Caliente 10440 9, Colonia Aviacion, Tijuana, Baja California, Mexico; Entre Abelardo L. Rodriguez y Avenida Del Rio, Tijuana, Baja California, Mexico; R.F.C. # ITC–910503 (Mexico) [SDNTK]

Individuals

1. HERNANDEZ SOMERO, Urbano, Avenida Manuela Herrera 592, Colonia Rio Reforma CP 22000, Tijuana, Baja California, Mexico; C. Mision de Mulege 2993, Colonia Zona Urbana Rio Tijuana, Tijuana, Baja California, Mexico;

Avenida Manuela Herrera 590, Colonia Rio Reforma CP 22000, Tijuana, Baja California, Mexico; Avenida Del Bosque 4640, Colonia Jardines de Chapultepec, Tijuana, Baja California, Mexico; C. Hermosillo, Colonia Rancho El Grande CP 22000, Tijuana, Baja California, Mexico; Pda. Mercurio, Colonia Puerta De Hierro CP 22330, Tijuana, Baja California, Mexico; Pda. Del Cobre 0, Colonia Puerto De Hierro CP 22000, Tijuana, Baja California, Mexico; c/o COMPLEJO TURISTICO OASIS S.A. DE C.V., Rosarito, Baja California, Mexico; c/o PLAYA MAR S.A. DE C.V., Tijuana, Baja California, Mexico; c/o INMOBILIARIA LA PROVINCIA S.A. DE C.V., Tijuana, Baja California, Mexico; c/o INMOBILIARIA ESTADO 29 S.A. DE C.V., Tijuana, Baja California, Mexico; c/o INMOBILIARIA TIJUANA COSTA S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 25 May 1943; POB Mexicali, Baja California, Mexico; C.U.R.P. # HESU430525HBCRMR13 (Mexico); alt. C.U.R.P. # HESU430525HBCRMR05 (Mexico); alt. C.U.R.P. # HEXU430525HBCRXR07 (Mexico); Immigration No. A38839964 (United States) (individual) [SDNTK]

2. AGUIRRE RAMOS, Manuel Francisco, Paseo de los Heroes, Av. 95 B7, Colonia Rio Tijuana, Tijuana, Baja California, Mexico; Prol. Puerta de Hierro, Colonia Puerta de Hierro, Tijuana, Baja California, Mexico; Pda. Manuel M. Flores 2, Colonia Hipodromo Dos, Tijuana, Baja California, Mexico; c/o INMOBILIARIA ESPARTA S.A. DE C.V., Tijuana, Baja California, Mexico; c/o INMOBILIARIA LA PROVINCIA S.A. DE C.V., Tijuana, Baja California, Mexico; Calle 2A Barrio Juarez 2034–702, Colonia Zona Central, Tijuana, Baja California, Mexico; DOB 16 Mar 1969; POB Baja California, Mexico; C.U.R.P. # AURM690316HBCGMN05 (Mexico); R.F.C. # AURM–690316–97A (Mexico) (individual) [SDNTK]

3. URIBE URIBE, Miguel Angel, c/o INMOBILIARIA ESTADO 29 S.A. DE C.V., Tijuana, Baja California, Mexico; Calle Nevado de Toluca 845, Tijuana, Baja California, Mexico; c/o INMOBILIARIA LA PROVINCIA S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 2 Aug 1957; POB Tijuana, Baja California, Mexico; C.U.R.P. # UIUM570802HBCRRG08 (Mexico) (individual) [SDNTK]

4. JIMENEZ PEREZ, Jose Julian Bruno, c/o INMOBILIARIA ESTADO 29 S.A. DE C.V., Tijuana, Baja California, Mexico; Calle Rio Bravo, Colonia Revolucion, Tijuana, Baja California, Mexico; Avenida Independencia, Colonia Zona Urbana Rio Tijuana, Tijuana, Baja California, Mexico; c/o INMOBILIARIA LA PROVINCIA S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 19 Jun 1961; POB Ensenada, Baja California, Mexico; C.U.R.P. # JIPJ610619HBCMRL07 (Mexico) (individual) [SDNTK]

5. VALENCIA MARTINEZ, Alberto Alfredo Avenida I.T.R. 2207, Colonia Tecnologico, Tijuana, Baja California, Mexico; Calle Geiser 101, Colonia Colinas de Agua Caliente, Tijuana, Baja California, Mexico; Avenida Hipodromo 19, Colonia Hipodromo, Tijuana, Baja California, Mexico; Calle Lomas Altas 1480, Colonia Lomas de Agua Caliente, Tijuana, Baja California, Mexico; Calle Coronado 21760, Colonia Mesetas del Guaycura, Tijuana, Baja California, Mexico; Blvd. Fundadores 0, Colonia El Rubi, Tijuana, Baja California, Mexico; c/o INMOBILIARIA TIJUANA COSTA S.A. DE C.S., Tijuana, Baja California, Mexico; DOB 8 Apr 1949; POB Tijuana, Baja California, Mexico; C.U.R.P. # VAMA490408HBCLRL08 (Mexico); R.F.C. # VAMA–490408–C6A (Mexico) (individual) [SDNTK]

6. PELAYO MENDOZA, Franco Arturo, Calle Farallon 3206, Colonia Playas de Tijuana, Secc. Costa Hermosa, Tijuana, Baja California, Mexico; Paseo Playas de Tijuana 317, Tijuana, Baja California, Mexico; Paseo del Pedregal 3034, Colonia Playas de Tijuana, Secc. Costa Hermosa, Tijuana, Baja California, Mexico; Calle De La Luz 218, Colonia Playas de Tijuana, Secc. Costa Hermosa, Tijuana, Baja California, Mexico; Blvd. Insurgentes 16174–18–B, Colonia Los Alamos, Tijuana, Baja California, Mexico; Calle 16 de Septiembre 3–FA, Colonia Las Torres, Tijuana, Baja California, Mexico; Calle Juan Covarrubias, Colonia Los Altos, Tijuana, Baja California, Mexico; c/o INMOBILIARIA TIJUANA COSTA S.A. DE C.S., Tijuana, Baja California, Mexico; DOB 2 Feb 1953; POB Casimiro Castillo, Jalisco, Mexico (individual) [SDNTK]

7. CARVAJALINO, Jesus Emilio, (a.k.a. "PARIS, Andres"); DOB 15 Mar 1955; POB Bogota, Colombia; Passport AC192015 (Colombia); Cedula No. 3228737 (Colombia); (INDIVIDUAL) [SDNTK]

8. GARCIA MOLINA, Gener, (a.k.a. "GUTIERREZ, Jhon"; a.k.a. "HERNANDEZ, John"; a.k.a. "JHON 40"; a.k.a. "JOHN 40"; a.k.a. "JOHNNY 40"); DOB 23 Aug 1963; POB San Martin, Meta, Colombia; Cedula No. 17353242 (Colombia); (INDIVIDUAL) [SDNTK]

9. GRANDA ESCOBAR, Rodrigo, (a.k.a. "CAMPOS, Arturo"; a.k.a. "GALLOPINTO"; a.k.a. "GONZALEZ, Ricardo"); Avenida Victoria No. 36, Urbanizacion Bolivar La Victoria, Jose Felix Rivas, Estado de Aragua, Venezuela; DOB 9 Apr 1949; POB Frontino, Antioquia, Colombia; Cedula No. 171493523–4 (Ecuador); alt. Cedula No. 19104578 (Colombia); Electoral Registry No. 22942118 (Venezuela); Passport PO16104 (Colombia); (INDIVIDUAL) [SDNTK]

10. JUVENAL VELANDIA, Jose, (a.k.a. MUNOZ ORTIZ, Manuel Jesus; a.k.a. "IVAN RIOS") DOB 19 Dec 1961; POB San Francisco, Putumayo, Colombia; Cedula No. 71613902 (Colombia) (INDIVIDUAL) [SDNTK]

11. LISANDRO LASCARRO, Jose, (a.k.a. MUNOZ LASCARRO, Felix Antonio; a.k.a. "PASTOR ALAPE"); DOB 4 Jun 1959; alt. DOB 1946; POB Puerto Berrio, Antioquia, Colombia; Cedula No. 71180715 (Colombia); alt. Cedula No. 3550075 (Colombia); (INDIVIDUAL) [SDNTK]

12. SERPA DIAZ, Alvaro Alfonso, (a.k.a. CERPA DIAZ, Alvaro Alfonso; a.k.a. CERPA DIAZ, Tiberio Antonio; a.k.a. SERPA DIAZ, Alvaro Enrique; a.k.a. "FELIPE RINCON"); DOB 28 Mar 1959; alt. DOB 9 Oct 1956; POB San Jacinto, Bolivar, Colombia; alt. POB Cali, Colombia; Cedula No. 6877656 (Colombia); (INDIVIDUAL) [SDNTK]

13. TOVAR PARRA, Ferney, (a.k.a. "DIEGO"; a.k.a. "FERCHO"); DOB 17 Nov 1966; POB Cartagena del Chaira, Caqueta, Colombia; Cedula No. 17640605 (Colombia); (INDIVIDUAL) [SDNTK]

14. ALVIS PATINO, Gentil, (a.k.a. LOPEZ, Angel Leopoldo; a.k.a. MARTINEZ VEGA, Juan Jose; a.k.a. PATINO ORTIZ, Alvis; a.k.a. "CHIGUIRO"; a.k.a. "GONZALEZ, Ruben"); DOB 4 Jun 1961; POB El Doncello, Caqueta, Colombia; Cedula No. 17669391 (Colombia); alt. Cedula No. 12059198 (Venezuela) (INDIVIDUAL) [SDNTK]

15. AGUILAR RAMIREZ, Gerardo Antonio, (a.k.a. "CESAR"); DOB 20 Sep 1962; POB Colombia; Cedula No. 16148998 (Colombia); Alt. Cedula No. 16447616 (Colombia); (INDIVIDUAL) [SDNTK]

In addition, OFAC has made a change to the following listings of two individuals previously designated pursuant to the Kingpin Act:

1. AGUIRRE GALINDO, Manuel, c/o Complejo Turistico Oasis, S.A. DE C.V., Rosarito, Baja California, Mexico; DOB 2 Nov 1950; R.F.C. AUGM–501102–PM3 (Mexico) (individual)[SDNTK]

2. GALINDO LEYVA, Esperanza, c/o Complejo Turistico Oasis, S.A. de C.V., Playas de Rosarito, Rosarito, Baja California, Mexico; DOB 16 Aug 1920; R.F.C. GALE–200816–6IA (Mexico) (individual) [SDNTK]

The listings now appear as follows:

1. AGUIRRE GALINDO, Manuel, c/o COMPLEJO TURISTICO OASIS S.A. DE C.V., Playas de Rosarito, Baja California, Mexico; c/o INMOBILIARIA ESPARTA S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 02 Nov 1950; POB Tijuana, Baja California, Mexico; R.F.C. # AUGM–501102–PM3 (Mexico) (individual)

2. GALINDO LEYVA, Esperanza, c/o COMPLEJO TURISTICO OASIS, S.A. de C.V., Playas de Rosarito, Rosarito, Baja California, Mexico; 536 Huerto Place, Chula Vista, CA 91910; 950 Norella Street, Chula Vista, CA 91910; c/o PLAYA MAR S.A. DE C.V., Tijuana, Baja California, Mexico; c/o INMOBILIARIA LA PROVINCIA S.A. DE C.V., Tijuana, Baja California, Mexico; DOB 16 Aug 1920; POB San Ignacio, Sinaloa, Mexico; Passport 99020017901 (Mexico); R.F.C. # GALE–200816–6IA (Mexico); alt. R.F.C. # GALE–241004–61A (Mexico) (individual) [SDNTK]

Dated: September 28, 2006.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E6–16424 Filed 10–3–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–12]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. OP–1267]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2006–36]

NATIONAL CREDIT UNION ADMINISTRATION

Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Notice of proposed illustrations of consumer information with request for comment.

SUMMARY: The OCC, Board, FDIC, OTS, and NCUA (the Agencies), request comment on these Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products. The illustrations are intended to assist institutions in implementing the consumer protection portion of the Interagency Guidance on Nontraditional Mortgage Product Risks (Interagency Guidance), which is being published simultaneously with this notice. The illustrations are not intended as model forms, and institutions will not be required to use them. Rather, they are provided at the request of commenters to the Interagency Guidance to illustrate the type of information that the Interagency Guidance contemplates.

DATES: Comments must be submitted on or before December 4, 2006.

ADDRESSES: The Agencies will jointly review all of the comments submitted. Therefore, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Please consider submitting your comments by e-mail or fax since paper mail in the Washington area and at the Agencies is subject to delay. Interested parties are invited to submit comments to:

OCC: You should include "OCC" and Docket Number 06–12 in your comment. You may submit your comment by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web site: http://www.occ.treas.gov.* Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."
- *E-Mail Address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., *Attn:* Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number for this notice. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Viewing Comments Electronically:* You may request that we send you an electronic copy of comments via e-mail or mail you a CD–ROM containing electronic copies by contacting the OCC at *regs.comments@occ.treas.gov.*
- *Docket Information:* You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1267, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the Agency Web site.
- *E-Mail: Comments@FDIC.gov.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by docket number 2006–36, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail address: regs.comments@ots.treas.gov*. Please include docket number 2006–36 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–36.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Address envelope as follows: Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–36.

Instructions: All submissions received must include the agency name and docket number for this proposed Guidance. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the OTS's Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include "[Your name] Comments on" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael S. Bylsma, Director, Stephen Van Meter, Assistant Director, or Kathryn D. Ray, Special Counsel, Community and Consumer Law Division, (202) 874–5750.

Board: Kathleen C. Ryan, Counsel, Division of Consumer and Community Affairs, (202) 452–3667; or Andrew Miller, Counsel, Legal Division, (202) 452–3428. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

FDIC: April Breslaw, Acting Associate Director, Compliance Policy & Exam Support Branch, (202) 898–6609, Division of Supervision and Consumer Protection; or Richard Foley, Counsel, (202) 898–3784, Legal Division.

OTS: Montrice G. Yakimov, Assistant Managing Director, Compliance and Consumer Protection Division, (202) 906–6173; or Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection Division, (202) 906–7158.

NCUA: Cory Phariss, Program Officer, Examination and Insurance, (703) 518–6618.

SUPPLEMENTARY INFORMATION:

I. Background

On December 29, 2005, the Agencies published for comment proposed Interagency Guidance on Nontraditional Mortgage Products, 70 FR 77249 (Dec. 29, 2005). The consumer protection section of the proposed guidance set forth recommended practices to ensure that consumers have clear and balanced information about nontraditional mortgages prior to making a mortgage product choice, such as when lenders provide promotional materials about nontraditional mortgages or during face-to-face meetings when consumers are shopping for a mortgage. Additionally, the proposed guidance recommended that monthly statements given with payment option mortgages provide information that enables consumers to make informed payment choices. The Agencies have revised the proposed guidance based on the comments received, and today are publishing the final Interagency Guidance in a separate **Federal Register** notice.

The Interagency Guidance, including the consumer protection portion, is a set of recommended practices to assist institutions in addressing particular risks raised by nontraditional mortgage products. Several commenters to the proposal, including industry trade associations, encouraged the Agencies to include model or sample disclosures or other descriptive materials as part of the Interagency Guidance.

In response to commenters, the Agencies believe that illustrations of consumer information may be useful to institutions as they seek to implement the consumer information recommendations of the Interagency Guidance. The Agencies also believe that it would be desirable to seek public comment before issuing illustrations of the recommended practices, to determine the types of illustrations that would be most useful to consumers and institutions.

II. Proposed Illustrations

The Agencies appreciate that some institutions, including community banks, may prefer not to incur the costs and other burdens of developing their own consumer information documents to address the issues raised in the Interagency Guidance, and could benefit from illustrations like those below.

Use of the proposed illustrations would be *entirely voluntary*. Accordingly, there is no Agency requirement or expectation that institutions must use the illustrations in their communications with consumers.

Institutions seeking to follow the recommendations set forth in the Interagency Guidance could, at their option, elect to:

- Use or not use the illustrations;
- Provide information based on the illustrations, but expand, abbreviate, or otherwise tailor any information in the illustrations as appropriate to reflect, for example:
  - The institution's product offerings, such as by deleting information about loan products and loan terms not offered by the institution and by revising the illustrations to reflect specific terms currently offered by the institution;
  - The consumer's particular loan requirements;
  - Current market conditions, such as by changing the loan amounts, interest rates, and corresponding payment amounts to reflect current local market circumstances; and

○ Other information, consistent with the Interagency Guidance, such as the payment and loan balance information for monthly statements discussed in connection with Illustration 3 or information about when a prepayment penalty may be imposed; or

• Provide the information described in the Interagency Guidance, as appropriate, in an alternate format.

Whether or not an institution chooses to use the proposed illustrations, the Interagency Guidance recommends that promotional materials and other product descriptions provide consumers with information about the costs, terms, features, and risks of nontraditional mortgage products that can assist consumers in their product selection decisions. This includes information about potential payment shock and negative amortization and, where applicable, information about prepayment penalties and the costs of reduced documentation loans. The recommended information could be presented in a brief narrative format as shown in Illustration 1 and/or in a chart with examples as shown in Illustration 2.

Set forth below are three illustrations that show how important information about nontraditional mortgages could be provided to consumers in a concise and focused manner and format. The Agencies request comment on all aspects of these illustrations. We encourage specific comment on whether the illustrations, as proposed, would be useful to institutions, including community banks, seeking to implement the "Communications with Consumers" portion of the Interagency Guidance, or whether changes should be made to them. We also encourage specific comment on whether the illustrations, as proposed, would be useful in promoting consumer understanding of the risks and material terms of nontraditional mortgage products, as described in the Interagency Guidance, or whether changes should be made to them. Finally, we seek comment on whether there are other illustrations relating to nontraditional mortgages that would be useful to institutions and consumers.

The Agencies are aware that individual institutions and industry associations have developed and are likely to continue developing documents that can be effective in conveying critical information discussed in the "Communications with Consumers" portion of the Interagency Guidance. These illustrations are not intended to dissuade institutions and trade associations from developing their own means of delivering important information about nontraditional mortgages to consumers. In this regard, the Agencies note that they have not conducted any consumer testing to assess the effectiveness of any existing documents currently used by institutions, or of the proposed illustrations set forth below. Commenters are specifically invited to provide information on any consumer testing they have conducted in connection with comparable disclosures.

Illustration 1.

Key Facts About Interest-Only and Payment Option Mortgages

Whether you are buying a house or refinancing your mortgage, this information can help you decide if an interest-only mortgage or a mortgage with the option to make a minimum payment (a payment-option mortgage) is right for you.

Interest-Only Mortgages

An "interest-only" mortgage allows you to pay only the interest on the money you borrowed for the first few years of the mortgage. This is known as the "interest-only period" (for example, the first 5 years of the loan). If you only pay the amount of interest that's due, once the interest-only period ends:

►You will still owe the original amount you borrowed.

►Your monthly payment will increase – even if interest rates stay the same – because you must pay back the principal as well as interest.

►►Ask what the payments on your loan will be after the end of the interest-only period. If you are considering an adjustable rate mortgage, ask about what your payments can be if interest rates increase.

Payment Option Mortgages

A payment option mortgage allows you to choose among several payment options each month, usually during the first few years of the loan (the "option period"). The options typically include:

- *A* payment of principal and interest, which reduces the amount you owe on your mortgage. These payments may be based on a 15-, 30-, or 40-year payment schedule.
- An interest-only payment, which does not reduce the amount you owe on your mortgage.
- A minimum payment, which may be less than the amount of interest due that month and does not pay down the principal. If you choose this option, the amount of any interest you do not pay will increase the amount you owe.

►The option period will end earlier than scheduled if the amount you owe grows beyond a set limit, for instance 110% or 125% of your original mortgage amount. Suppose you made only the minimum payments on a $180,000 mortgage and your payments did not cover all of the interest due. If your balance grew to $225,000 because of the interest due that is not covered by the minimum payment, your loan would be recalculated and it is likely that your payments would increase significantly.

►Your monthly payment could increase significantly, because:

- You will have to start paying back principal as well as interest.
- Unpaid interest has been added to your principal and the total amount you owe has increased.
- Interest rates may have increased (if your mortgage has an adjustable rate feature).

►►Ask:

- What the monthly payments on your loan could be when you must start paying back principal,
- How interest rate increases could affect your monthly payment (if your mortgage has an adjustable rate feature),
- When the payment adjustments will be made, and
- The maximum amount you could owe on the loan if you make minimum payments.

Additional Information

►Home Equity. Home equity is created when the value of your home increases and/or when you reduce the amount you owe on your home through your loan payments. If your home does not increase in value and you make interest-only payments, you are not building equity. And, if you make only the minimum payments on a mortgage with a payment option feature, you may be increasing the amount you owe because unpaid interest is added to the loan balance. This may make it harder to refinance your mortgage, or to receive funds from the sale of your home. In fact, if the amount you owe on your home, along with the costs associated with selling it (such as the real estate sales commissions and closing costs) exceeds the sales price, you will not receive any cash when you sell, and will have to pay additional funds to your lender or to other parties when you pay off your mortgage.

►Prepayment Penalties. Some mortgages have prepayment penalties. If you sell your home or refinance your loan during the prepayment penalty period, you could owe additional fees or a penalty. Ask whether your mortgage has a prepayment penalty and, if so, how much it can be. Most mortgages let you make extra, additional principal payments with your monthly payment -- this is not "prepayment" of the entire loan, and there usually is no penalty for these extra amounts.

►No Doc/Low Doc Loans. Lenders often charge more for "reduced documentation" loans. These loans typically have higher interest rates or other costs compared to "full documentation" loans that require you to verify your income and other assets. (By verifying your income, you help the lender to be sure that you can afford the loan payments.) If you are considering a loan with a reduced documentation feature, ask if you'll be required to pay more (in interest and/or fees) for not submitting income and asset documentation.

Illustration 2

Some of the information recommended by the guidance—in particular, some of the more detailed information about payment shock and negative amortization—may be conveyed most effectively through quantitative illustrations. The Interagency Guidance expressly contemplates hypothetical loan examples to aid consumer understanding. This information also could be incorporated into a narrative format as shown in Illustration 1. Illustration 2 shows another way in which this information could be presented. The chart and the narrative explanation may also be combined into a two-page document that both explains and illustrates the key facts about nontraditional mortgage products.

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Illustration 2.

COMPARISON OF SAMPLE MORTGAGE FEATURES

(For illustrative and educational purposes only – does not represent actual terms of loans available from any particular lender.)

	A Typical Mortgage Transaction Loan Amount $180,000 – 30-Year Term				
	Mortgage with a Fixed Interest Rate		**Mortgage with an Adjustable Interest Rate (ARM)**		
	Principal and Interest Fixed Rate (6.7%)	**Interest Only** Fixed Rate (6.7%) Interest Only for First 5 Years.	**5/1 ARM** Fixed Rate for First 5 Years; Adjustable Each Year After First 5 Years (Initial rate for years 1 to 5 is 6.5%; Maximum Rate is 11.5%)	**Interest Only** Interest Only and Fixed Rate for First 5 Years; Adjustable Rate Each Year After First 5 Years (Initial rate for years 1 to 5 is 6.6%; Maximum Rate is 11.6%)	**Option Payment** Adjustable Rate for Entire Term of the Mortgage (Rate in month 1 is 1.25%; Rate in month 2 through year 5 is 6.4%; Maximum Rate is 11.4%)
Minimum Monthly Payment Years 1-5, except as noted	**$1,162***	**$1,005**	**$1,138**	**$990**	**$600*** (1st year only)**
Monthly Payment Year 6 – no change in rates	**$1,162**	**$1,238****	**$1,138**	**$1,227**	**$1,324**
Monthly Payment Year 6 – 2% rise in rates	**$1,162**	**$1,238**	**$1,357**	**$1,462**	**$1,581**
Maximum Monthly Payment Year 8 – 5% rise in rates	**$1,162**	**$1,238**	**$1,702**	**$1,832**	**1,985**
How Much Will You Owe after 5 Years?	**$168,862**	**$180,000**	**$168,500**	**$180,000**	**$197,945**
Have You Reduced Your Loan Balance after 5 Years of Payments?	**Yes Your loan balance was reduced by $11,118**	**No You did not reduce your loan balance**	**Yes Your loan balance was reduced by $11,500**	**No You did not reduce your loan balance**	**No Your loan balance increased by $17,945**

* This illustrates an interest rate and payments that are fixed for the life of the loan.

** This illustrates payments that are fixed after the first 5 years of the loan at a higher amount because they cover both principal and interest.

*** This illustrates minimum monthly payments that are based on an interest rate that is in effect during the first month only. The payments required during the first year will not be sufficient to cover all of the interest that's due when the rate increases in the second month of the loan. Any unpaid interest amount will be added to the loan balance. Minimum payments for years 2-5 are based on the higher interest rate in effect at the time, subject to any contract limits on payment increases. Minimum payments will be recast (recalculated) after 5 years, or when the loan balance reaches a certain limit, to cover both principal and interest at the applicable rate.

IMPORTANT NOTE: Please use this chart to discuss possible loans with your lender.

Illustration 3

The Interagency Guidance also recommends that if institutions provide monthly statements to consumers on payment option mortgages, those statements should provide information that enables consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. The following illustration shows one way in which this information could be presented. It is important to note this illustration is not intended to set forth all of the information that may be useful, and could be provided, to consumers on their monthly statement, such as the current loan balance, an itemization of the payment amount devoted to interest and to principal, and whether the loan balance has increased.

Illustration 3.

Your Payment Options This Month	Amount	Impact
Principal and Interest Payment	$_____	• You will reduce your loan balance.
Interest-Only Payment	$_____	• You will not pay any principal on your loan. • You will **not** reduce your loan balance.
Minimum Payment	$_____	• You [will] [may] **not** cover the interest on your loan. • You [will] [may] **increase** your loan balance.

III. Request for Comment

As noted above, the Agencies request comment on all aspects of the proposed illustrations. Comments are specifically requested on the usefulness of the illustrations, as proposed, for consumers and for institutions, or whether changes should be made; whether the information is set forth in a clear manner and format; whether these illustrations or a modified form should be adopted by the Agencies; and whether there are other illustrations relating to nontraditional mortgages that would be useful to consumers and institutions in addition to these.

Dated: September 25, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 27, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 27th day of September, 2006.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 28, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration on : Thursday, September 28, 2006.

JoAnn M. Johnson,

Chairman.

[FR Doc. 06–8479 Filed 10–3–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–C

Federal Register

Wednesday,
October 4, 2006

Part II

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2006, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION: Contact David Guilford, (202) 606–1391.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, 213.103 (c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415, or by calling (202) 606–6500.

The following exceptions were current on June 30, 2006:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) (Reserved).

(g) (Reserved).

(h) (Reserved).

(i) Temporary and less-than-full time positions for which examining is impracticable.

These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) Eligible employees.

(i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110, but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) Employees excluded. Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) Position to which appointed. Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) Conditions of appointment.

(i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or

university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associate ship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons who have been certified by state vocational rehabilitation agencies as likely to succeed. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instruction issued by the Office.

(u) Positions when filled by severely physically handicapped persons who:

(1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or

(2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg) Positions when filled by persons with psychiatric disabilities who have demonstrated their ability to perform satisfactorily under a temporary appointment [such as one authorized in 213.3102(i)(3)] or who are certified as likely to be able to perform the essential functions of the job, with or without reasonable accommodation, by a State vocational rehabilitation counselor, a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist. Upon completion of 2 years of satisfactory service under this authority, the employee can be converted, at the discretion of the agency, to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

(hh) (Reserved).

(ii) Positions of Fellows in the Presidential Management Fellows Program. Initial appointments of Fellows are made at either the GS–9, GS–11, or GS–12 level (or their equivalents), depending on the candidate's qualifications. Appointments are made under this authority for 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the appointment for up to 1 additional year. Upon the Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERG) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in § 315.708 and part 362 of this chapter.

(jj) Positions of Senior Fellows in the Presidential Management Fellows Program. Initial appointments are made at either the GS–13, GS–14, or GS–15 level (or their equivalents), depending on the candidate's qualifications. Appointments may be made under this authority for 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the Senior Fellow's appointment for up to 1 additional year. Upon the Senior Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERB) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in § 315.708 and part 362 of this chapter. If a Senior Fellow successfully completes the Program, as certified by the appointing agency's ERB or equivalent, he/she may, at the agency's discretion, be appointed to a

position in the Senior Executive Service (SES) (or equivalent) without further competition and only one time, in the same manner, and subject to the same Qualifications Review Board review, as an individual who has successfully completed an OPM-approved SES candidate development program under parts 317 and 412 of this chapter.

(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full-time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) Office of Administration.

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget. (1) Not to exceed 15 positions at grades GS–5/15.

(c) Council on Environmental Quality. (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) National Security Council.

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy.

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy.

(1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) Office of the Secretary.

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) American Embassy, Paris, France.

(1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(f) (Reserved).

(g) Bureau of Population, Refugees, and Migration.

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration.

(1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) Up to 250 time-limited positions within the Department of State in support of the June 2004 Economic Summit of Industrial Nations. No new appointments may be made under this authority after June 30, 2004.

Section 213.3105 Department of the Treasury

(a) Office of the Secretary.

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 50 positions in the Office of the Under Secretary (Enforcement).

(b) U.S. Customs Service.

(1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) Office of Thrift Supervision.

(1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) Internal Revenue Service.

(1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) Bureau of Alcohol, Tobacco, and Firearms.

(1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

Section 213.3106 Department of Defense

(a) Office of the Secretary.

(1)–(5) (Reserved).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).

(1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided, that

(i) a school employee may be permitted to complete the school year; and

(ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons

employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) Positions engaged in the reconstruction of Iraq for hiring non-U.S. citizens when there is a severe shortage of candidates with U.S. citizenship. This authority is limited to appointments made on or before July 1, 2004, and is subject to any restrictions set forth in the Department of Defense FY 2002 Appropriations Act.

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after March 31, 2009.

(c) (Reserved).

(d) General.

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences.

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University.

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency.

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisitions University.

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany.

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii.

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

Section 213.3107 Department of the Army

(a)–(c) (Reserved).

(d) U.S. Military Academy, West Point, New York.

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved).

(g) Defense Language Institute.

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA.

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) General.

(1)–(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College.

(1) Professors, instructors, and teachers; the Director of Academic

Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) Chief of Naval Operations.

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command.

(1) All positions on vessels operated by the Military Sealift Command.

(e) Pacific Missile Range Facility, Barking Sands, Hawaii.

(1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) Office of Naval Research.

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) Office of the Secretary.

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General.

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred forty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado.

(1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) Air Force Office of Special Investigations.

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama.

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.

(1) Civilian deans and professors.

(j) Air Force Logistics Command.

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) General.

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in one-year increments for the duration of the in-country program.

(b) Immigration and Naturalization Service.

(1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) Drug Enforcement Administration.

(1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) National Drug Intelligence Center. All positions.

Section 213.3111 Department of Homeland Security

(a) Up to 50 positions at the GS–5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after September 30, 2005.

(b)(1) Ten positions for over site policy and direction of sensitive law enforcement activities.

(c) Up to 15 Senior Level and General Schedule (or equivalent) positions within the Homeland Security Labor Relations Board and the Homeland Security Mandatory Removal Board.

Section 213.3112 Department of the Interior

(a) General.

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) Indian Arts and Crafts Board. (1) The Executive Director.

(d) (Reserved).

(e) Office of the Assistant Secretary, Territorial and International Affairs.

(1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service.

(1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation.

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs.

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) General.

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved).

(b)–(c) (Reserved).

(d) Farm Service Agency.

(1) (Reserved).

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development.

(1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service.

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) Food Safety and Inspection Service.

(1)–(2) (Reserved).

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration.

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation.

(1) Executive Director.

Section 213.3114 Department of Commerce

(a) General.

(1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) Bureau of the Census.

(1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved).

(i) Office of the Under Secretary for International Trade.

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) National Oceanic and Atmospheric Administration.

(1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) National Telecommunication and Information Administration.

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) Office of the Secretary.

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved).

(d) Employment and Training Administration.

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) General.

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service.

(1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State,

county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved).

(f) The President's Council on Physical Fitness.

(1) Four staff assistants.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) Construction Division.

(1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals.

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 Broadcasting Board of Governors

(a) International Broadcasting Bureau.

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

Section 213.3133 Federal Deposit Insurance Corporation

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3146 Selective Service System

(a) State Directors.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3162 The President's Crime Prevention Council

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent

Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

Section 213.3165 Chemical Safety and Hazard Investigation Board

(a) (Reserved).

(b) Seven positions of either Chemical Incident Investigators or Chemical Safety Recommendation Specialists, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after October 15, 2002, or until the seventh person (who was given an offer of employment on September 13, 2002, and is waiting a physical examination clearance) is appointed, whichever is later.

Section 213.3166 Court Services and Offender Supervision Agency of the District of Columbia

(a) All positions, except for the Director, established to create the Court Services and Offender Supervision Agency of the District of Columbia. No new appointments may be made under this authority after March 31, 2004.

Section 213.3170 Millennium Challenge Corporation

(a) All positions established to create the Millennium Challenge Corporation. No new appointments may be made under this authority after March 31, 2007.

Section 213.3174 Smithsonian Institution

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, two Social Science Program Administrators, and one Middle East Studies Program Administrator.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) National Endowment for the Arts.

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

Section 213.3190 African Development Foundation

(a) One Enterprise Development Fund Manager. Appointment authority is limited to four years unless extended by the Office of Personnel Management.

Section 213.3191 Office of Personnel Management

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) U.S. Coast Guard.

(1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved).

(e) Maritime Administration.

(1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile

Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) Student Educational Employment Program—Student Temporary Employment Program.

(1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

[The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) Student Educational Employment Program—Student Career Experience Program.

(1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

* * * * *

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k)–(l) (Reserved).

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

(o) The Federal Career Intern Program—

(1) Appointments. Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) Extensions.

(i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

* * * * *

[The remaining text of provisions pertaining to the Federal Career Intern Program can be found in 5 CFR 213.3202(o).]

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) Office of the Special Representative for Trade Negotiations.

(1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) a total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

Section 213.3206 Department of Defense

(a) Office of the Secretary.

(1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities.

(1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University.

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General.

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General.

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama.

(1) One Director, GM–15.

(g) Defense Security Assistance Agency. All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

Section 213.3207 Department of the Army

(a) U.S. Army Command and General Staff College.

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

Section 213.3208 Department of the Navy

(a) Naval Underwater Systems Center, New London, Connecticut.

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)–(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) Foreign Agricultural Service.

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General.

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) Bureau of the Census.

(1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) (Reserved).

(b)–(c) (Reserved).

(d) National Telecommunications and Information Administration.

(1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Chair and a maximum of four additional Members, Administrative Review Board.

(b) (Reserved).

(c) Bureau of International Labor Affairs.

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

Section 213.3217 Department of Education

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3255 Social Security Administration

(a) Temporary and time-limited positions in the Ticket to Work and Work Incentives Advisory Panel. No employees may be appointed after November 17, 2007.

Section 213.3274 Smithsonian Institution

(a) (Reserved).

(b) Freer Gallery of Art.

(1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) Naval Home, Gulfport, Mississippi.

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) National Endowment for the Humanities.

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEGS60001 Confidential Assistant to the Chairman, Council of Economic Advisers

CEGS60004 Confidential Assistant to the Chairman, Council of Economic Advisers

CEGS60005 Administrative Operations Assistant to the Member (Council for Economic Advisers)

Council on Environmental Quality

EQGS00018 Associate Director for Congressional Affairs to the Chairman (Council on Environmental Quality)

Office of Management and Budget

BOGS00151 Deputy Press Secretary to the Press Secretary

BOGS00152 Portfolio Manager to the Administrator, E-Government and Information Technology

BOGS00160 Press Secretary to the Associate Director, Strategic Planning and Communications

BOGS60011 Deputy General Counsel to the General Counsel

BOGS60025 Confidential Assistant to the Deputy Director for Management

BOGS60027 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs

BOGS60141 Deputy to the Associate Director for Legislative Affairs (Senate) to the Executive Associate Director

BOGS60143 Deputy to the Associate Director for Legislative Affairs (House) to the Executive Associate Director

BOGS60150 Confidential Assistant to the Controller, Office of Federal Financial Management

BOGS60152 Confidential Assistant to the Executive Associate Director
BOGS60153 Confidential Assistant to the Associate Director for National Security Programs
BOGS60155 Special Assistant to the Director, Office of Management and Budget
BOGS60157 Confidential Assistant to the Administrator, E-Government and Information Technology
BOSL00003 Special Assistant to the Administrator, Office of Information and Regulatory Affairs

Office of National Drug Control Policy

QQGS00015 Associate Deputy Director, State and Local Affairs to the Deputy Director for State and Local Affairs
QQGS00028 White House Liaison and Intergovernmental Affairs Specialist to the Chief of Staff QQGS00035 Policy Analyst and Intergovernmental Affairs Liaison to the Associate Deputy Director, State and Local Affairs
QQGS00036 Public Affairs Specialist to the Associate Director, Public Affairs
QQGS00037 Public Affairs Specialist (Press Secretary) to the Associate Director, Public Affairs
QQGS00085 Special Assistant to the Deputy Director for Demand Reduction to the Director
QQGS00087 Special Assistant to the Special Assistant to the Director
QQGS60001 Special Assistant to the Director
QQGS60007 Special Assistant to the Director
QQGS60084 Public Affairs Specialist to the Chief of Staff
QQGS60086 Staff Assistant to the Counselor to the Deputy Director
QQGS60089 Associate Director Office of Legislative Affairs to the Chief of Staff
QQGS60090 Public Affairs Specialist to the Counselor to the Deputy Director
QQGS60091 Legislative Analyst to the Associate Director, Office of Legislative Affairs

Office of the United States Trade Representative

TNGS00016 Public Affairs Specialist to the Chief of Staff
TNGS00018 Attorney-Adviser to the Chief of Staff
TNGS00019 Confidential Assistant to the Deputy United States Trade Representative
TNGS00020 Confidential Assistant to the Deputy United States Trade Representative
TNGS00071 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Chief of Staff
TNGS60048 Staff Assistant to the Chief of Staff

Official Residence of the Vice President

RVGS00004 Deputy Social Secretary to the Assistant to the Vice President and Deputy Chief of Staff

Office of Science and Technology Policy

TSGS00001 Confidential Assistant to the Chief of Staff
TSGS60006 Assistant Associate Director for Telecommunications and Information Technology to the Associate Director, Science
TSGS60030 Confidential Assistant to the Chief of Staff and General Counsel
TSGS60037 Deputy Chief of Staff
TSGS60039 Assistant to the Director for Legislative Affairs to the Chief of Staff

Section 213.3304 Department of State

DSGS60152 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60156 Confidential Assistant to the Secretary of State
DSGS60166 Attorney Advisor to the Deputy Assistant Secretary for Equal Employment Opportunity
DSGS60194 Senior Advisor to the Under Secretary for Arms Control and Security Affairs
DSGS60201 Staff Assistant to the Under Secretary for Global Affairs
DSGS60267 Foreign Affairs Officer to the Principal Deputy Assistant Secretary
DSGS60389 Senior Advisor to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS60394 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60395 Director, Art in Embassies Program to the Deputy Assistant Secretary
DSGS60417 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60445 Special Advisor to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60500 Foreign Affairs Officer to the Assistant Secretary for European Affairs
DSGS60508 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60552 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60567 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60712 Special Advisor to the Assistant Legal Adviser
DSGS60723 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60724 Special Assistant to the Director Office Resource Management Office of Foreign Buildings Operations
DSGS60725 Press Officer to the Assistant Secretary for Public Affairs
DSGS60737 Special Assistant to the Legal Adviser
DSGS60747 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60749 Special Assistant to the Deputy Assistant Secretary
DSGS60750 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60752 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60762 Special Assistant to the Assistant Secretary for Public Affairs
DSGS60763 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60765 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60769 Special Assistant to the Under Secretary for Management
DSGS60770 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
DSGS60771 Coordinator for Intergovernmental Affairs to the Assistant Secretary for Public Affairs
DSGS60773 Special Assistant to the Assistant Secretary, Bureau of Verification and Compliance
DSGS60774 Special Assistant to the Coordinator
DSGS60776 Special Assistant to the Coordinator
DSGS60778 Foreign Affairs Officer to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60781 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60782 Special Assistant to the Assistant Secretary for Western Affairs to the Assistant Secretary for African Affairs
DSGS60790 Special Assistant to the Assistant Secretary, Office of the Under Secretary for Economic and Business Affairs
DSGS60793 Chief, Voluntary Visitors Division to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS60795 Member, Policy Planning Staff to the Director, Policy Planning Staff
DSGS60798 Legislative Management Officer to the Assistant Secretary for

Legislative and Intergovernmental Affairs
DSGS60816 Special Assistant to the Deputy Secretary
DSGS60817 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60947 Staff Assistant (Visits) to the Supervisory Protocol Officer (Visits)
DSGS60949 Public Affairs Specialist to the Coordinator for International Information Programs
DSGS60950 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS60951 Congressional Affairs Manager to the Assistant Secretary for International Organizational Affairs
DSGS60953 Foreign Affairs Officer to the Deputy Assistant Secretary
DSGS60954 Special Assistant to the Chief of Protocol
DSGS60956 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60959 Staff Assistant to the Deputy Secretary
DSGS60962 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60964 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60965 Foreign Affairs Officer to the Deputy Assistant Secretary
DSGS60968 Special Assistant to the Assistant Secretary for Public Affairs
DSGS60970 Special Assistant to the Assistant Secretary for Public Affairs
DSGS60971 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60973 Chief of Staff to the Director, Policy Planning Staff
DSGS60977 Special Assistant to the Assistant Secretary for Economic and Business Affairs
DSGS60978 Director, New Partner Outreach to the HIV/Aids Coordinator
DSGS60979 Special Assistant to the Assistant Secretary
DSGS60980 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60981 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60983 Staff Assistant to the Chief of Protocol
DSGS60984 Special Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60985 Public Affairs Specialist to the Deputy Chief of Protocol
DSGS60986 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60989 Special Assistant to the Assistant Secretary for Economic and Business Affairs
DSGS60990 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60994 Senior Advisor to the Under Secretary for Management
DSGS60997 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61000 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS61003 Special Assistant to the Assistant Secretary for Economic and Business Affairs
DSGS61005 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61006 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61007 Staff Assistant to the Director, Policy Planning Staff
DSGS61008 Special Assistant to the Assistant Secretary for International Organizational Affairs
DSGS61009 Senior Advisor to the Assistant Secretary for International Organizational Affairs
DSGS61011 Special Assistant to the Assistant Secretary for African Affairs
DSGS61013 Senior Advisor to the Assistant Secretary
DSGS61014 Assistant Manager, President's Guest House to the Deputy Chief of Protocol
DSGS61016 Staff Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS61018 Foreign Affairs Officer to the Assistant Secretary for Democracy Human Rights and Labor
DSGS61019 Senior Advisor to the Under Secretary for Global Affairs
DSGS61022 Special Assistant to the Deputy Assistant Secretary
DSGS61023 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS61024 Special Assistant to the Principal Deputy Assistant Secretary
DSGS61025 Public Affairs Specialist to the HIV/Aids Coordinator
DSGS61026 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61028 Program Officer (Foreign Press Officer) to the Assistant Secretary for Public Affairs
DSGS61029 Protocol Officer to the Deputy Chief of Protocol
DSGS61030 Staff Assistant to the Assistant Secretary for International Organizational Affairs
DSGS61031 Senior Advisor to the Under Secretary for Economic Business and Agricultural Affairs
DSGS61032 Staff Assistant to the Director, Policy Planning Staff
DSGS61033 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS61034 Staff Assistant to the Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs
DSGS61035 Staff Assistant to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs
DSGS61036 Staff Assistant to the Assistant Secretary for Public Affairs
DSGS61037 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS61038 Special Assistant to the Chief of Protocol
DSGS61040 Staff Assistant to the Deputy Assistant Secretary
DSGS61042 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
DSGS61043 Coordinator for Intergovernmental Affairs to the Deputy Assistant Secretary
DSGS61045 Special Assistant to the Assistant Secretary for Democracy Human Rights and Labor
DSGS61046 Special Assistant to the Counselor
DSGS61047 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61048 Staff Assistant to the Counselor
DSGS61050 Staff Assistant to the Deputy Secretary
DSGS61051 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS61052 Special Assistant to the Hiv/Aids Coordinator
DSGS61053 Staff Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS61057 Writer-Editor to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS61058 Staff Assistant to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS61060 Protocol Assistant to the Chief of Protocol
DSGS61061 Protocol Officer (Gifts) to the Chief of Protocol
DSGS61062 Foreign Affairs Officer (Visits) to the Chief of Protocol

DSGS61070 Special Advisor to the Assistant Secretary
DSGS61071 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61073 Senior Advisor to the Assistant Secretary for Population, Refugees and Migration
DSGS61074 Senior Advisor to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs
DSGS61076 Special Assistant to the Chief of Staff
DSGS61078 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS61079 Staff Assistant to the Coordinator for International Information Programs
DSGS61081 Foreign Affairs Officer to the Director
DSGS61083 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61084 Staff Assistant to the Director, Policy Planning Staff
DSGS61085 Senior Advisor to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS61087 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61089 Supervisory Protocol Officer (Visits) to the Chief of Protocol
DSGS61091 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61092 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs

Section 213.3305 Department of the Treasury

DYGS00230 Public Affairs Specialist to the Director, Public Affairs
DYGS00250 Director, Public Affairs to the Deputy Assistant Secretary for Public Affairs
DYGS00356 Director, Critical Infrastructure Protection and Compliance Policy to the Deputy Assistant Secretary (Critical Infrastructure Protection and Compliance Policy)
DYGS00359 Senior Advisor to the Under Secretary for International Affairs
DYGS00375 Director of Legislative and Governmental Affairs to the Director of the Mint
DYGS00400 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00410 Senior Advisor to the Deputy Secretary of the Treasury
DYGS00420 Special Assistant to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS00424 Senior Advisor to the Assistant Secretary (Economic Policy)
DYGS00429 Executive Assistant to the Secretary
DYGS00430 Senior Advisor to the Under Secretary for Domestic Finance
DYGS00439 Executive Secretary to the Chief of Staff
DYGS00441 Director of Outreach to the Deputy Assistant Secretary (Financial Education)
DYGS00443 Special Assistant to the Assistant Secretary (Terrorist Financing)
DYGS00444 Special Assistant to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development)
DYGS00445 Senior Advisor to the Secretary (Scheduling) to the Chief of Staff
DYGS00451 Policy Analyst to the Assistant Secretary (Terrorist Financing)
DYGS00453 Media Coordinator to the Assistant Secretary (Public Affairs)
DYGS00454 Director, Travel Operations to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00455 Special Assistant to the Deputy Assistant Secretary (Financial Education)
DYGS00456 Special Assistant to the Deputy General Counsel
DYGS00458 Special Assistant to the Treasurer of the United States
DYGS00459 Special Assistant to the Director of Legislative and Intergovernmental Affairs
DYGS00460 Senior Advisor to the Under Secretary for Enforcement
DYGS00461 Senior Advisor to the Assistant Secretary (Tax Policy)
DYGS00463 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00464 Special Assistant to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS00465 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00467 Associate Director to the White House Liaison
DYGS00468 Public Affairs Specialist to the Director, Public Affairs
DYGS00469 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary (Public Affairs)
DYGS00470 Senior Advisor to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development)
DYGS00471 Public and Legislative Affairs Manager to the Director Community Development Financial Institutions
DYGS60250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs)
DYGS60307 Senior Advisor to the Treasurer of the United States
DYGS60351 Senior Advisor to the Assistant Secretary (Public Affairs)
DYGS60362 Special Assistant to the Assistant Secretary (Financial Institutions)
DYGS60381 Special Assistant to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS60395 Deputy Executive Secretary to the Executive Secretary
DYGS60396 Senior Advisor to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development)
DYGS60404 Senior Advisor to the Assistant Secretary (Financial Institutions)
DYGS60414 Executive Assistant to the Deputy Secretary of the Treasury
DYGS60417 Senior Advisor to the Deputy Assistant Secretary (Government Financial Policy)
DYGS60418 Special Assistant to the Executive Secretary

Section 213.3306 Office of the Secretary of Defense

DDGS00673 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)
DDGS00682 Staff Assistant to the Deputy Assistant Secretary of Defense (Asia and Pacific)
DDGS00708 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS00714 Special Assistant to the Under Secretary of Defense (Policy) to the Under Secretary of Defense for Policy
DDGS00771 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS00779 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS16514 Personal and Confidential Assistant to the Secretary of Defense
DDGS16660 Director of Assessments to the Deputy Under Secretary of Defense (International Technology Security)
DDGS16692 Confidential Assistant to the Secretary of Defense
DDGS16694 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16709 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16740 Confidential Assistant to the Secretary of Defense

DDGS16758 Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16787 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16796 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)
DDGS16802 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security)
DDGS16808 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16809 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics)
DDGS16810 Confidential Assistant to the Deputy Under Secretary of Defense (Personnel and Readiness)
DDGS16811 Special Assistant to the Director, Small and Disadvantaged Business Utilities
DDGS16821 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16823 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS16836 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16839 Supervisory Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Internal Communications)
DDGS16858 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16863 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16864 Executive Assistant to the President's Physician to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16867 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16868 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16870 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Policy)
DDGS16874 Confidential Assistant to the Assistant Secretary of Defense (Reserve Affairs)
DDGS16876 Staff Assistant to the Deputy Assistant Secretary of Defense (Detainee Affairs)
DDGS16878 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16880 Staff Assistant to the Deputy Assistant Secretary of Defense (Resources and Plans)
DDGS16882 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Policy)
DDGS16883 Staff Assistant to the Special Assistant for Business Transformation
DDGS16885 Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16886 Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16888 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)
DDGS16890 Special Assistant to the Deputy Assistant Secretary of Defense (Budget and Appropriations Affairs) to the Deputy Under Secretary of Defense (Resource Planning/ Management)
DDGS16892 Confidential Assistant to the Under Secretary of Defense (Comptroller) to the Under Secretary of Defense (Comptroller)
DDGS16893 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16894 Personal and Confidential Assistant to the Principal Under Secretary of Defense (Policy)
DDGS16898 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16899 Staff Specialist to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16901 Special Assistant to the Assistant Secretary of Defense (Public Affairs) to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16902 Public Affairs Specialist to the Public Affairs Specialist
DDGS16905 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16908 Civilian Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16909 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16910 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16912 Research Assistant to the Deputy Assistant Secretary of Defense (Internal Communications)
DDGS16913 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16914 Personal and Confidential Assistant to the Deputy Secretary of Defense
DDGS16915 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16917 Confidential Assistant to the Director of Defense Research and Engineering
DDGS16918 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS16920 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS16921 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS16923 Research Assistant to the Speechwriter
DDGS16924 Speechwriter to the Speechwriter
DDGS16925 Public Affairs Specialist to the Public Affairs Specialist
DDGS16927 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16928 Director, Department of Defense Office of Legislative Counsel to the Deputy General Counsel Legal Counsel
DDGS16929 Assistant for Research, Analysis and Special Projects to the Special Assistant to the Secretary and Deputy Secretary of Defense
DDGS16930 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16932 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16933 Special Assistant to the Deputy Under Secretary of Defense (Acquisition and Technology)
DDGS16936 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller) and Deputy Under Secretary of Defense (Management Reform)
DDGS16937 Foreign Affairs Specialist to the Director, Administration and Management
DDGS16940 Research Assistant to the Speechwriter
DDGS16941 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16942 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS16943 Administrative Assistant to the Director, Department of Defense Office of Legislative Counsel
DDGS16944 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS16946 Staff Assistant to the Assistant Secretary of Defense (Health Affairs)
DDGS16948 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller)

DDGS16950 Confidential Assistant to the Deputy Under Secretary of Defense (Acquisition and Technology)
DDGS16951 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16954 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS60033 Personal Secretary to the Deputy Secretary of Defense to the Deputy Secretary of Defense
DDGS60305 Personal and Confidential Assistant to the Under Secretary of Defense (Personnel and Readiness)
DDGS60312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (International Secretary Policy)
DDGS60314 Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DDGS60319 Confidential Assistant to the Deputy Secretary of Defense
DDGS60368 Personal and Confidential Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS60369 Executive Assistant to the Director of Force Transformation
DDGS60454 Special Assistant to the Director of Net Assessment
DDGS60475 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)
DDGS60520 Special Assistant to the Deputy Assistant Secretary of Defense (Prisoners of War/Military Police)/ Director, Prisoners of War Missing Persons Office
DDGS60611 Personal and Confidential Assistant to the Secretary of Defense
DDGS60686 Personal and Confidential Assistant to the General Counsel

Section 213.3307 Department of the Army

DWGS00063 Confidential Assistant to the Assistant Secretary of Army (Installations and Environment)
DWGS00064 Personal and Confidential Assistant to the Assistant Secretary of the Army (Financial Management and Comptroller)
DWGS00065 Special Assistant to the Deputy Assistant Secretary of the Army for Privatization and Partnerships (I and E)
DWGS00066 Confidential Assistant to the Special Assistant to the Secretary of Army for Business Transformation Initiatives
DWGS00067 Confidential Assistant to the Deputy Under Secretary of the Army
DWGS00077 Confidential Assistant to the Assistant Secretary of the Army (Civil Works)
DWGS00081 Assistant for Water Resources Policy to the Deputy Assistant Secretary of the Army (Legislation)
DWGS60002 Special Assistant to the Secretary of the Army
DWGS60015 Special Assistant for Business System Analysis to the Secretary of the Army
DWGS60016 Confidential Assistant to the Secretary of the Army
DWGS60017 Special Assistant to the Army General Counsel
DWGS60019 Business Transformation Initiatives Analyst to the Special Assistant to the Secretary of Army for Business Transformation Initiatives
DWGS60076 Special Assistant to the Assistant Secretary of the Army (Civil Works)
DWGS60082 Personal Confidential Assistant to the Under Secretary of the Army

Section 213.3308 Department of the Navy

DNGS06025 Confidential Assistant to the Assistant Secretary of the Navy (Research Development and Acquisition)
DNGS06113 Staff Assistant to the Secretary of the Navy
DNGS60069 Staff Assistant to the Under Secretary of the Navy
DNGS60071 Residence Manager and Social Secretary to the Vice President to the Secretary of the Navy
DNGS60075 Confidential Assistant to the Assistant Secretary of the Navy (Financial Management and Comptroller)

Section 213.3309 Department of the Air Force

DFGS60042 Special Assistant for Community Relations to the Special Assistant to the Secretary of the Air Force
DFGS60045 Budget Analyst to the Assistant Secretary (Financial Management and Comptroller)
DFGS60046 Budget Analyst to the Assistant Secretary (Financial Management and Comptroller)

Section 213.3310 Department of Justice

DJGS00019 Advisor to the Chairman
DJGS00027 Counselor to the Assistant Attorney General, Environment and Natural Resources
DJGS00028 Director of Congressional Affairs to the Administrator, Drug Enforcement Administration
DJGS00033 Counsel to the Assistant Attorney General
DJGS00035 Counsel (Senior Attorney) to the Administrator, Drug Enforcement Administration
DJGS00042 Confidential Assistant to the Director, Office of Public Affairs
DJGS00048 Congressional Liaison Specialist to the Administrator, Drug Enforcement Administration
DJGS00049 Special Assistant to the Administrator of Juvenile Justice and Delinquency Prevention
DJGS00051 Chief of Staff to the Administrator of Juvenile Justice and Delinquency Prevention
DJGS00052 Chief of Staff to the Director, National Institute of Justice
DJGS00053 Special Assistant to the Director, Alcohol, Tobacco, Firearms, and Explosives
DJGS00055 Chief of Staff to the Assistant Attorney General (Legal Policy)
DJGS00058 Chief of Staff to the Assistant Attorney General for Justice Programs
DJGS00060 Senior Advisor for Communications and Strategy to the Assistant Attorney General for Justice Programs
DJGS00061 Senior Advisor to the Assistant Attorney General to the Deputy Assistant Attorney General
DJGS00063 Project Safe Neighborhoods Coordinator to the Deputy Attorney General
DJGS00076 Public Affairs Specialist to the United States Attorney, Western District, Texas
DJGS00105 Counsel to the Special Counsel
DJGS00108 Special Assistant to the Director
DJGS00117 Deputy Director, Office of Faith-Based and Community Initiatives to the Director, Office of Faith-Based and Community Initiatives
DJGS00118 Special Assistant to the Director
DJGS00123 Senior Counsel to the Director, Office of Public Affairs
DJGS00125 Special Assistant to the Assistant Attorney General
DJGS00126 Deputy Chief of Staff and Counsel to the Assistant Attorney General
DJGS00130 Counsel to the Assistant Attorney General
DJGS00135 Special Assistant to the Assistant Attorney General, Tax Division
DJGS00143 Counsel to the Assistant Attorney General, Criminal Division
DJGS00145 Executive Assistant to the Solicitor General
DJGS00154 Speechwriter to the Director, Office of Public Affairs
DJGS00155 Speechwriter to the Director, Office of Public Affairs
DJGS00163 Special Assistant to the Assistant Attorney General
DJGS00176 Public Affairs Specialist to the Director, Office of Public Affairs
DJGS00183 Counsel to the Deputy Attorney General

DJGS00185 Senior Counsel to the Deputy Attorney General
DJGS00186 Senior Counsel to the Deputy Attorney General
DJGS00187 Counsel to the Assistant Attorney General Civil Division
DJGS00189 Counsel to the Assistant Attorney General Civil Division
DJGS00194 Counselor to the Assistant Attorney General (Legal Policy)
DJGS00201 Counselor to the Assistant Attorney General Criminal Division
DJGS00202 Counsel to the Assistant Attorney General Criminal Division
DJGS00203 Counsel to the Assistant Attorney General Criminal Division
DJGS00207 Special Assistant to the Director of the Violence Against Women Office
DJGS00221 Chief of Staff to the Director, Office for Victims of Crime
DJGS00237 Press Assistant to the Director, Office of Public Affairs
DJGS00238 Press Assistant to the Director, Office of Public Affairs
DJGS00251 Director of Advance to the Chief of Staff
DJGS00262 Special Counsel for Voting Matters to the Assistant Attorney General
DJGS00291 Deputy Chief Privacy and Civil Liberties Officer and Counsel to the Deputy Attorney General
DJGS00307 Associate Director to the Director, Office of Intergovernmental and Public Liaison to the Director
DJGS00313 Special Assistant to the Assistant Attorney General (Legal Policy)
DJGS00317 Deputy Chief of Staff to the Assistant Attorney General Criminal Division
DJGS00322 Counsel to the Assistant Attorney General (Legal Policy)
DJGS00324 Special Assistant to the Assistant Attorney General (Legislative Affairs)
DJGS00328 Associate Director to the Director
DJGS00329 Associate Director to the Director
DJGS00332 Counsel to the Assistant Attorney General
DJGS00338 Special Assistant to the Assistant Attorney General
DJGS00339 Special Assistant to the Attorney General
DJGS00346 Deputy Director to the Director, Office of Public Affairs
DJGS00348 Briefing Book Coordinator to the Chief of Staff
DJGS00370 Confidential Assistant to the Attorney General
DJGS00374 Staff Assistant to the Director, Office of Public Affairs
DJGS00379 Special Assistant to the Director, Office of Public Affairs
DJGS00386 Deputy Director of Scheduling to the Director of Scheduling and Advance
DJGS00390 Counsel to the Assistant Attorney General (Legal Counsel)
DJGS00392 Policy Coordinator and Special Assistant to the Director
DJGS00398 Media Affairs Specialist to the Director, Office of Public Affairs
DJGS00400 Public Affairs Specialist to the United States Attorney, Western District, Virginia
DJGS00403 Public Affairs Specialist to the Director, Office of Public Affairs
DJGS00406 Senior Press Assistant to the Director, Office of Public Affairs
DJGS00413 Executive Assistant to the United States Attorney
DJGS00441 Counsel to the Assistant Attorney General Tax Division
DJGS00445 Special Assistant to the Director, Community Relations Service
DJGS60014 Deputy Administrator to the Administrator Juvenile Justice Delinquency Prevention
DJGS60015 Deputy Director to the Director, National Institute of Justice
DJGS60023 Special Assistant for International Protocol to the Director, Office of International Affairs
DJGS60172 Secretary (Office Automation) to the United States Attorney, Western District, Louisiana
DJGS60173 Secretary (Office Automation) to the United States Attorney, Northern District, Oklahoma
DJGS60267 Counsel to the Assistant Attorney General
DJGS60277 Director of Scheduling and Advance to the Attorney General
DJGS60418 Secretary (Office Automation) to the United States Attorney, Nebraska
DJGS60420 Secretary (Office Automation) to the United States Attorney, Eastern District, Pennsylvania
DJGS60423 Secretary (Office Automation) to the United States Attorney, New Mexico
DJGS60427 Secretary (Office Automation) to the United States Attorney, New Hampshire
DJGS60429 Secretary (Office Automation) to the United States Attorney, Eastern District, Arkansas
DJGS60430 Secretary (Office Automation) to the United States Attorney, Kansas
DJGS60436 Secretary (Office Automation) to the United States Attorney, Southern District, Alabama
DJGS60437 Secretary (Office Automation) to the United States Attorney, Delaware
DJSL00290 Director, Alcohol, Tobacco, Firearms, and Explosives to the Attorney General

Section 213.3311 Department of Homeland Security

DMGS00051 Business Analyst to the Special Assistant
DMGS00101 Director/Executive Secretariat, Private Sector Advisory Committee to the Special Assistant
DMGS00109 Business Liaison to the Special Assistant
DMGS00122 Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00151 Business Liaison to the Special Assistant
DMGS00209 Public Liaison Officer to the Director of Public Liaison
DMGS00239 Director of Intergovernmental Affairs for Emergency Preparedness and Response to the Disaster Policy Fund Financial Manager
DMGS00253 Assistant Director of Legislative Affairs for Secretarial Offices to the Director of Legislative Affairs for Secretarial Offices
DMGS00257 Director, Trade Relations to the Commissioner, Customs and Border Protection
DMGS00259 Counter Narcotics Liaison to the Counter Narcotics Officer
DMGS00268 Assistant Commissioner for Public Affairs to the Assistant Secretary for Public Affairs
DMGS00285 Policy Analyst to the Special Assistant
DMGS00288 Special Assistant to the Chief Financial Officer
DMGS00290 Executive Officer to the Ombudsman
DMGS00303 Business Liaison to the Special Assistant
DMGS00329 Senior Policy Advisor to the Deputy Assistant Secretary for Mission Integration
DMGS00330 Special Assistant to the Ombudsman
DMGS00337 Assistant Commissioner for Legislative Affairs to the Commissioner, Customs and Border Protection
DMGS00349 Senior Advisor to the Assistant Secretary for Infrastructure Protection to the Deputy Assistant Secretary for Mission Integration
DMGS00353 Executive Assistant to the Director, Office of State and Local Government Coordination
DMGS00360 Writer-Editor to the Executive Secretary
DMGS00367 Writer-Editor (Speechwriter) to the Assistant Secretary for Public Affairs
DMGS00375 Coordination Officer for State and Territorial Affairs to the Director, Office of State and Local Government Coordination

DMGS00380 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs
DMGS00382 Press Assistant to the Deputy Assistant Secretary for Public Affairs
DMGS00385 Advance Representative to the Director of Scheduling and Advance
DMGS00393 Immigration and Customs Enforcement Communications Director to the Assistant Secretary, Immigration and Customs Enforcement
DMGS00395 Senior Advisor to the Chief Medical Officer
DMGS00396 Press Secretary to the Assistant Secretary for Public Affairs
DMGS00400 Legislative Assistant to the Director of Legislative Affairs for Science and Technology
DMGS00401 Director, Ready Campaign to the Assistant Secretary for Public Affairs
DMGS00403 Confidential Assistant to the Executive Secretary
DMGS00405 Assistant Director of Communications for Citizenship and Immigration Services to the Director of Communications for Bureau of Citizenship and Immigration Services
DMGS00406 Special Assistant to the Director, Domestic Nuclear Detection Office
DMGS00408 Assistant Director of Legislative Affairs for Mass Transit and Immigration to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00410 Executive Assistant to the Director, Office of Systems Engineering and Acquisition
DMGS00411 Special Assistant to the Deputy Assistant Secretary for Infrastructure Protection (Policy)
DMGS00412 Speechwriter to the Director of Communications
DMGS00413 Senior Legislative Policy Advisor to the Deputy Assistant Secretary for Border and Transportation Security Policy
DMGS00415 Public Affairs Specialist to the Assistant Commissioner for Public Affairs
DMGS00417 Executive Assistant to the Chief of Staff
DMGS00418 Special Assistant to the Assistant Secretary, Immigration and Customs Enforcement
DMGS00421 Confidential Assistant to the Chief Medical Officer
DMGS00422 Assistant Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00423 Policy Advisor to the Chief of Staff
DMGS00426 Director of Communications for United States Citizenship and Immigration Services to the Director, Bureau of Citizenship and Immigration Services
DMGS00427 Counselor to the Director to the Director, Bureau of Citizenship and Immigration Services
DMGS00428 Advisor to the Chief of Staff
DMGS00429 Director of Legislative Affairs for the Secretarial Offices to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00430 Attorney-Adviser (General) to the General Counsel
DMGS00431 Special Assistant to the Assistant Secretary for Information Analysis to the Assistant Secretary for Information Analysis
DMGS00433 Junior Writer and Researcher to the Director of Speechwriting
DMGS00437 Advisor to the Director to the Chief of Staff for Citizenship and Immigration Services
DMGS00438 Special Assistant to the Assistant Secretary to the Assistant Secretary for Information Analysis
DMGS00442 Senior Legislative Assistant to the Assistant Secretary and Deputy Assistant Secretaries to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00444 Trip Coordinator to the Director of Scheduling and Advance
DMGS00446 Senior Advisor for Civil Rights and Civil Liberties to the Officer of Civil Rights and Civil Liberties
DMGS00448 Operations and Special Projects Coordinator to the Deputy Secretary of the Department of Homeland Security
DMGS00449 Director of Legislative Affairs, Federal Emergency Management Agency to the Under Secretary for Federal Emergency Management
DMGS00450 Confidential Assistant to the Director, National Capital Region Coordination
DMGS00451 Special Assistant to the Director, National Capital Region Coordination
DMGS00452 Attorney-Adviser to the General Counsel
DMGS00453 Special Assistant to the Assistant Commissioner for Legislative Affairs
DMGS00454 Special Advisor for Refugee and Asylum Affairs to the Assistant Secretary for Policy
DMGS00458 Associate Executive Secretary for Internal Coordination to the Executive Secretary
DMGS00459 Assistant Director of Legislative Affairs for Information Analysis and Operations to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00461 Special Assistant to the Executive Secretary and Deputy Executive Secretary to the Executive Secretary
DMGS00462 Director of Information Integration and Special Assistant to the Secretary to the Chief of Staff
DMGS00463 Correspondence Analyst to the Executive Secretary
DMGS00464 Confidential Assistant—Briefing Book to the Executive Secretary
DMGS00465 Special Assistant to the Under Secretary for Preparedness to the White House Liaison
DMGS00467 Advisor to the Director to the White House Liaison
DMGS00468 Public Liaison Officer to the Director of Strategic Communications
DMGS00470 Chief of Staff, Office of Grants and Training to the Executive Director, Office of Grants and Training
DMGS00471 Special Assistant to the Under Secretary for Preparedness
DMGS00472 Correspondence Analyst to the Executive Secretary
DMGS00474 Director of Communications for Intelligence and Operations to the Deputy Assistant Secretary for Public Affairs
DMGS00475 Coordinator for Local Affairs to the Director for Public Safety Coordination
DMGS00479 Chief Technology and Process Manager to the Executive Secretary
DMGS00482 Director of Legislative Affairs for Intelligence and Operations to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00483 Press Secretary to the Director of Communications
DMGS00485 Policy Analyst to the Chief Privacy Officer
DMGS00486 Supervisory Management and Program Analyst to the Executive Secretary
DMGS00487 Advisor to the Under Secretary for Preparedness to the Under Secretary for Preparedness
DMGS00488 Press Officer to the Assistant Commissioner for Public Affairs
DMGS00489 Deputy Director of Secretarial Briefing Book to the Executive Secretary
DMGS00490 Director of Faith-Based and Community Initiatives to the Under Secretary for Preparedness
DMGS00491 Confidential Assistant to the Chief of Staff
DMGS00492 Deputy Director for Legislative Affairs to the Director of Legislative Affairs, Federal Emergency Management Agency
DMGS00493 Confidential Assistant to the General Counsel

DMGS00494 Special Assistant to the Under Secretary for Federal Emergency Management
DMGS00495 Assistant Director to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00496 Director of Scheduling and Advance to the Chief of Staff
DMGS00497 Deputy Executive Director, Homeland Security Advisory Committees to the Executive Director, Homeland Security Advisory Committees
DMGS00498 Advisor to the Director for Intergovernmental Affairs to the Director, Bureau of Citizenship and Immigration Services
DMGS00499 Confidential Assistant to the Chief of Staff
DMGS00500 White House Liaison and Advisor to the Chief of Staff
DMGS00501 Special Assistant to the Chief of Staff
DMGS00502 Confidential Assistant to the Deputy White House Liaison and Advisor to the Chief of Staff
DMGS00503 Director of Strategic Communications to the Assistant Secretary for Public Affairs
DMGS00504 Special Assistant to the Assistant Secretary for Infrastructure Protection
DMGS00505 Confidential Assistant to the Secretary of the Department of Homeland Security
DMGS00506 Policy Analyst to the Assistant Secretary for Private Sector
DMGS00507 Special Assistant to the Assistant Secretary for Policy
DMGS00508 Public Affairs Specialist to the Director of Communications, Office of Domestic Preparedness
DMGS00510 Policy Analyst to the Assistant Secretary for International Affairs
DMGS00511 Senior Advisor for Management to the Under Secretary for Management
DMGS00512 Advance Representative to the Advance Representative
DMGS00513 Advisor to the Assistant Secretary for Grants and Training to the Executive Director, Office of Grants and Training
DMGS00514 Confidential Assistant to the Assistant Secretary to the Assistant Secretary, Immigration and Customs Enforcement
DMGS00520 Confidential Assistant to the White House Liaison and Advisor
DMGS00521 Press Assistant to the Assistant Secretary for Public Affairs
DMGS00522 Assistant Press Secretary to the Assistant Secretary for Public Affairs
DMGS00523 Special Assistant to the Assistant Secretary, Immigration and Customs Enforcement
DMGS00524 Press Assistant to the Assistant Secretary for Public Affairs
DMGS00525 Policy Assistant to the Deputy Director, Federal Emergency Management Agency
DMGS00526 Deputy White House Liaison to the White House Liaison and Advisor
DMGS00527 Assistant Director for Legislative Affairs to the Assistant Secretary for Legislative Intergovernmental Affairs
DMGS00528 Special Assistant to the Associate General Counsel for Science and Technology
DMGS00530 Deputy Press Secretary to the Assistant Secretary for Public Affairs
DMGS00536 Director of Communications to the Deputy Director, Federal Emergency Management Agency
DMOT00395 Special Assistant to the Assistant Secretary, Transportation Security Administration
DMOT00519 Special Assistant to the Assistant Secretary to the Assistant Secretary, Transportation Security Administration

Section 213.3312 Department of the Interior

DIGS01043 Associate Director for Media and Public Affairs to the Executive Director Take Pride in America
DIGS01046 Special Assistant—Advance to the Director—Scheduling and Advance
DIGS01048 Special Assistant to the Senior Adviser to the Secretary for Alaskan Affairs
DIGS01053 Chief of Staff to the Assistant Secretary Policy Management and Budget
DIGS01054 Press Secretary to the Director, Office of Communications
DIGS01055 Deputy White House Liaison to the White House Liaison
DIGS01057 Special Assistant to the Director, External and Intergovernmental Affairs
DIGS01058 Director, Take Pride in America to the Deputy Secretary of the Interior
DIGS01059 Special Assistant—Historic Preservation to the Chief of Staff
DIGS01060 Special Assistant to the Assistant Secretary for Water and Science
DIGS01061 White House Liaison to the Deputy Chief of Staff
DIGS01062 Associate Director—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs
DIGS01064 Hispanic Media Outreach Coordinator to the Director, Office of Communications
DIGS01067 Special Assistant—Scheduling and Advance to the Director—Scheduling and Advance
DIGS01068 Special Assistant to the Secretary for Alaska to the Senior Adviser to the Secretary for Alaskan Affairs
DIGS05001 Special Assistant to the Director Bureau of Land Management
DIGS09059 Speechwriter to the Director, Office of Communications
DIGS60025 Special Assistant to the Secretary
DIGS60068 Associate Director—House to the Director, Congressional and Legislative Affairs
DIGS60525 Special Assistant to the Assistant Secretary—Land and Minerals Management
DIGS60526 Special Assistant to the Chief of Staff
DIGS61025 Director—Scheduling and Advance to the Chief of Staff
DIGS61027 Special Assistant to the Associate Deputy Secretary
DIGS61031 Special Assistant—Advance to the Director—Scheduling and Advance
DIGS61035 Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement
DIGS61038 Special Assistant to the Director, Minerals Management Service
DIGS61039 Special Assistant to the Executive Director Take Pride in America
DIGS70011 Special Assistant (Communication) to the Director, External and Intergovernmental Affairs
DIGS79003 Special Assistant (Communication) to the Director, External and Intergovernmental Affairs

Section 213.3313 Department of Agriculture

DAGS00158 Director of Constituent Affairs to the Deputy Chief of Staff
DAGS00161 Special Assistant to the Chief, Natural Research Conservation Service
DAGS00164 Director of Web Design to the Deputy Chief of Staff
DAGS00174 Confidential Assistant to the Deputy Assistant Secretary
DAGS00176 Confidential Assistant to the Deputy Assistant Secretary
DAGS00179 Director of External Affairs to the Administrator for Risk Management
DAGS00183 Director, Tobacco Programs to the Deputy Administrator
DAGS00190 Confidential Assistant to the Administrator, Farm Service Agency
DAGS00200 Special Assistant to the Secretary

DAGS00604 Confidential Assistant to the Director, Office of Business and Program Integration
DAGS00609 Special Assistant to the Associate Assistant Secretary for Civil Rights
DAGS00611 Director to the Administrator, Food and Nutrition Service
DAGS00701 Deputy Director, Office of Intergovernmental Affairs to the Director, Intergovernmental Affairs
DAGS00717 Special Assistant to the Administrator, Food and Nutrition Service
DAGS00718 Special Assistant to the Administrator, Farm Service Agency
DAGS00721 Confidential Assistant to the Administrator for Risk Management
DAGS00723 Special Assistant to the Administrator, Farm Service Agency
DAGS00725 Special Assistant to the Administrator to the Administrator, Foreign Agricultural Service
DAGS00728 Confidential Assistant to the Under Secretary for Rural Development
DAGS00729 Special Assistant to the Administrator
DAGS00731 Special Assistant to the Chief to the Chief, Natural Research Conservation Service
DAGS00735 Staff Assistant to the Administrator, Agricultural Marketing Service
DAGS00737 Staff Assistant to the Special Assistant
DAGS00739 Staff Assistant to the Administrator for Risk Management
DAGS00741 Special Assistant to the Administrator
DAGS00756 Confidential Assistant to the Deputy Assistant Secretary for Congressional Relations
DAGS00760 Confidential Assistant to the Administrator, Foreign Agricultural Service
DAGS00762 Confidential Assistant to the Administrator, Rural Housing Service
DAGS00763 Staff Assistant to the Under Secretary for Natural Resources and Environment
DAGS00765 Staff Assistant to the Under Secretary for Research, Education and Economics
DAGS00768 Special Assistant to the Administrator
DAGS00769 Confidential Assistant to the Deputy Administrator—Program Operations
DAGS00771 Confidential Assistant to the Under Secretary for Marketing and Regulatory Programs
DAGS00773 Special Assistant to the Secretary
DAGS00777 Special Assistant to the Chief, Natural Research Conservation Service
DAGS00778 Director of Faith-Based and Community Initiatives to the Secretary
DAGS00779 Confidential Assistant to the Executive Director, Center for Nutrition Policy and Promotion
DAGS00780 Confidential Assistant to the Administrator, Foreign Agricultural Service
DAGS00781 Confidential Assistant to the Deputy Under Secretary for Food Safety
DAGS00784 Special Assistant to the Assistant Secretary for Congressional Relations
DAGS00785 Special Assistant to the Administrator to the Under Secretary for Marketing and Regulatory Programs
DAGS00787 Director of Advance to the Director of Communications
DAGS00788 Press Secretary to the Director of Communications
DAGS00789 Staff Assistant to the Secretary
DAGS00795 Confidential Assistant to the Deputy Administrator—Program Operations
DAGS00796 Congressional Liaison to the Deputy Assistant Secretary
DAGS00798 Confidential Assistant to the Administrator, Rural Housing Service
DAGS00801 Confidential Assistant to the Secretary
DAGS00803 Director, Intergovernmental Affairs to the Deputy Assistant Secretary
DAGS00804 Deputy Press Secretary to the Director of Communications
DAGS00805 Director of Speechwriting to the Director of Communications
DAGS00807 White House Liaison to the Secretary
DAGS00808 Special Assistant to the Chief, Natural Research Conservation Service
DAGS00809 Special Assistant to the Deputy Administrator—Program Operations
DAGS00811 Staff Assistant to the Chief, Natural Research Conservation Service
DAGS00812 Staff Assistant to the Chief, Natural Research Conservation Service
DAGS00813 Confidential Assistant to the Deputy Assistant Secretary
DAGS00814 Confidential Assistant for Homeland Security to the Special Assistant
DAGS00817 Confidential Assistant to the Administrator, Farm Service Agency
DAGS00818 Special Assistant to the Under Secretary for Rural Development
DAGS00819 Special Assistant to the Under Secretary for Food Safety
DAGS00821 Confidential Assistant to the Administrator
DAGS00822 Special Assistant to the Associate Administrator, Programs
DAGS00826 Special Assistant to the Administrator, Agricultural Marketing Service
DAGS00828 Special Assistant to the Under Secretary for Rural Development
DAGS00829 Special Assistant to the Chief Information Officer
DAGS00830 Special Assistant to the Deputy Administrator—Program Operations
DAGS00831 Special Assistant to the Deputy Assistant Secretary
DAGS00834 Deputy White House Liaison to the Secretary
DAGS00835 Confidential Assistant to the Under Secretary for Rural Development
DAGS00836 Speech Writer to the Director of Communications
DAGS00837 Confidential Assistant to the Under Secretary for Rural Development
DAGS00838 Confidential Assistant to the Administrator to the Deputy Under Secretary for Marketing and Regulatory Programs
DAGS00839 Chief of Staff to the Administrator, Rural Housing Service
DAGS00841 Confidential Assistant to the Administrator, Food and Nutrition Service
DAGS00843 Staff Assistant to the Chief Financial Officer
DAGS00844 Special Assistant to the Deputy Under Secretary, Research, Education and Economics
DAGS00845 Deputy Director, Advance to the Director of Communications
DAGS00846 Deputy Director of Communications to the Director of Communications
DAGS00847 Confidential Assistant to the Associate Administrator
DAGS00848 Special Assistant to the Under Secretary for Natural Resources and Environment
DAGS60114 Confidential Assistant to the Deputy Secretary
DAGS60116 Confidential Assistant to the Under Secretary for Rural Development
DAGS60129 Special Assistant to the Administrator for Risk Management
DAGS60135 Confidential Assistant to the Administrator, Foreign Agricultural Service
DAGS60138 Special Assistant to the Administrator
DAGS60263 Special Assistant to the Chief, Natural Research Conservation Service
DAGS60332 Confidential Assistant to the Administrator
DAGS60384 Confidential Assistant to the Secretary

DAGS60436 Confidential Assistant to the Administrator
DAGS60451 Special Assistant to the Administrator, Farm Service Agency
DAGS60592 Special Assistant to the Administrator, Farm Service Agency

Section 213.3314 Department of Commerce

DCGS00161 Confidential Assistant to the Under Secretary for International Trade
DCGS00162 Senior Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00181 Senior Advisor to the Assistant Secretary for Telecommunications and Information
DCGS00191 Special Assistant to the General Counsel
DCGS00199 Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00218 Senior Advisor to the Regional Administrator Northwest Region
DCGS00220 Confidential Assistant to the Chief of Staff
DCGS00237 Special Assistant to the Deputy Assistant Secretary for Industry Analysis
DCGS00257 Confidential Assistant to the Deputy Assistant Secretary for Europe
DCGS00267 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS00275 Confidential Assistant to the Director, Office of Business Liaison
DCGS00285 Director of Intergovernmental Affairs to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00288 Confidential Assistant to the Director, Office of Business Liaison
DCGS00298 Special Assistant to the Deputy Assistant Secretary for Communications and Information
DCGS00311 Confidential Assistant to the Director Office of White House Liaison
DCGS00315 Director of Public Affairs to the Assistant Secretary for Economic Development
DCGS00318 Special Assistant to the Associate Under Secretary for Economic Affairs
DCGS00320 Confidential Assistant to the Secretary
DCGS00330 Special Assistant to the Director Advocacy Center
DCGS00342 Deputy Director to the Director, Office of Liaison to the
DCGS00346 Confidential Assistant to the Director Office of White House Liaison
DCGS00352 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00355 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00358 Special Assistant to the Assistant Secretary for Manufacturing and Services
DCGS00367 Confidential Assistant to the Director, Office of Legislative Affairs
DCGS00368 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS00373 Confidential Assistant to the Senior Advisor
DCGS00379 Senior Counsel to the General Counsel
DCGS00382 Confidential Assistant to the Deputy Chief of Staff for Policy
DCGS00385 Senior Advisor to the Director
DCGS00386 Confidential Assistant to the Director, Office of Legislative Affairs
DCGS00389 Senior Advisor to the Assistant Secretary for Import Administration
DCGS00395 Confidential Assistant to the Director of Global Trade Programs
DCGS00405 Chief of Staff to the Assistant Secretary and Director General of the United States Commercial
DCGS00418 Confidential Assistant to the Associate Director for Communications
DCGS00420 Special Assistant to the Director, Office of Business Liaison
DCGS00425 Director of Public Affairs to the Under Secretary for International Trade
DCGS00429 Confidential Assistant to the Director Advocacy Center
DCGS00433 Senior Policy Advisor to the Chief of Staff
DCGS00447 Confidential Assistant to the Director of Scheduling
DCGS00450 Senior Policy Advisor to the Director
DCGS00452 Confidential Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00457 Confidential Assistant to the Director of Scheduling
DCGS00470 Confidential Assistant to the Director, Executive Secretariat
DCGS00473 Confidential Assistant to the General Counsel
DCGS00485 Special Assistant to the Director, Office of External Affairs
DCGS00486 Deputy Director of Speechwriting to the Director for Speechwriting
DCGS00492 Confidential Assistant to the Director of Advance
DCGS00506 Public Affairs Specialist to the Director of Public Affairs
DCGS00526 Confidential Assistant to the Director, Advocacy Center
DCGS00529 Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
DCGS00534 Confidential Assistant to the Deputy Assistant Secretary for Transportation and Machinery
DCGS00540 Confidential Assistant to the Chief of Staff
DCGS00546 Special Assistant to the Deputy Secretary
DCGS00553 Confidential Assistant to the Assistant Secretary for Export Administration
DCGS00555 Public Affairs Specialist to the Director of Public Affairs
DCGS00558 Confidential Assistant to the Director of Advance
DCGS00560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00564 Confidential Assistant to the Director, Executive Secretariat
DCGS00571 Senior Policy Advisor to the Deputy Assistant Secretary for Services
DCGS00573 Special Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00575 Confidential Assistant to the Executive Assistant
DCGS00582 Confidential Assistant to the Assistant Secretary for Export Enforcement
DCGS00592 Legislative Affairs Specialist to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office
DCGS00593 Senior Advisor to the Coordinator for International Intellectual Property Enforcement
DCGS00609 Confidential Assistant to the Chief of Staff
DCGS00620 Director, Office of Legislative Affairs to the Under Secretary for International Trade
DCGS00623 Public Affairs Specialist to the Assistant Secretary for Manufacturing and Services
DCGS00628 Confidential Assistant to the Director of Public Affairs
DCGS00630 Executive Director to the National Director, Minority Business Development Agency
DCGS00631 Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)

DCGS00635 Director of Advisory Committees to the Assistant Secretary for Manufacturing and Services
DCGS00637 Special Assistant to the Director, Advocacy Center
DCGS00639 Press Secretary to the Director of Public Affairs
DCGS00640 Speechwriter to the Director of Public Affairs
DCGS00643 Confidential Assistant to the Deputy Under Secretary and Deputy Director of United States Patent and Trademark Office
DCGS00645 Senior Advisor to the Assistant Secretary for Export Enforcement
DCGS00656 Confidential Assistant to the Director of Advance
DCGS00658 Confidential Assistant to the Director, Office of Legislative Affairs
DCGS00669 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00672 Senior Advisor to the Deputy Secretary to the Deputy Secretary
DCGS00673 Chief of Staff to the Assistant Secretary for Market Access and Compliance
DCGS00680 Deputy Press Secretary to the Director of Public Affairs
DCGS00683 Senior Advisor to the Assistant Secretary for Import Administration
DCGS00684 Director for Speechwriting to the Director of Public Affairs
DCGS00692 Director of Congressional Affairs to the Deputy Assistant Secretary for External Affairs and Communication
DCGS00696 Deputy Director of Public Affairs to the Director of Public Affairs
DCGS60001 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
DCGS60004 Deputy Director to the Director, Executive Secretariat
DCGS60136 Special Assistant to the Under Secretary of Commerce for Industry and Security
DCGS60163 Executive Assistant to the Deputy Secretary
DCGS60205 Policy Advisor to the Chief of Staff
DCGS60225 Director, Congressional and Public Affairs to the Assistant Secretary for Export Administration
DCGS60272 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60276 Executive Assistant to the Under Secretary for Economic Affairs
DCGS60291 Public Affairs Specialist to the Director of Public Affairs
DCGS60302 Director of External Affairs to the Director, Office of Public and Constituent Affairs
DCGS60353 Confidential Assistant to the Executive Director for Trade Promotion and Outreach
DCGS60380 Confidential Assistant to the Chief of Staff to the Under Secretary, International Trade Administration
DCGS60393 Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS60394 Deputy Director, Office of Public Affairs to the Director of Public Affairs
DCGS60396 Legislative Affairs Specialist to the Director, Office of Legislative Affairs
DCGS60424 Legislative Affairs Specialist to the Director, Office of Legislative Affairs
DCGS60448 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60471 Confidential Assistant to the Chief of Staff to the Deputy Secretary
DCGS60490 Director of Scheduling to the Chief of Staff
DCGS60523 Press Secretary to the Director of Public Affairs
DCGS60574 Protocol Officer to the Director Office of White House Liaison
DCGS60583 Special Assistant to the Assistant Secretary for Administrator and Chief Financial Officer
DCGS60618 Special Assistant to the Deputy Under Secretary and Deputy Director of the United States Patent and Trademark Office
DCGS60664 Special Assistant to the Assistant Secretary and Director General of United States/For Commercial Services
DCGS60670 Director Office of Business Liaison to the Chief of Staff for National Oceanic and Atmospheric Administration
DCGS60677 Director, Office of Energy, Environment and Materials to the Deputy Assistant Secretary for Manufacturing
DCGS60681 Speechwriter to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office
DCGS60686 Director of Advance to the Chief of Staff
DCGS60688 Confidential Assistant to the Director of Global Trade Programs
DCGS60694 Senior Advisor to the Director, Bureau of the Census to the Director

Section 213.3315 Department of Labor

DLGS60008 Special Assistant to the Secretary of Labor
DLGS60017 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60025 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60043 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60045 Staff Assistant to the Special Assistant
DLGS60055 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60066 Special Assistant to the Deputy Assistant Secretary for Federal Contract Compliance
DLGS60074 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60076 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60078 Staff Assistant to the Assistant Secretary for Policy
DLGS60079 Special Assistant to the Assistant Secretary for Policy
DLGS60086 Senior Advisor to the Assistant Secretary for Employment Standards
DLGS60089 Special Assistant to the Director of Operations
DLGS60093 Staff Assistant to the Secretary of Labor
DLGS60094 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60096 Chief of Staff to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60099 Special Assistant to the Deputy Assistant Secretary for Employment and Training
DLGS60104 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60105 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60107 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60109 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60110 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60112 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60113 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60117 Senior Advisor to the Assistant Secretary for Employment Standards

DLGS60118 Staff Assistant to the Director of Operations
DLGS60119 Staff Assistant to the Chief of Staff
DLGS60121 Special Assistant to the Director of Operations
DLGS60122 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60123 Special Assistant to the Deputy Assistant Secretary
DLGS60126 Special Assistant to the Solicitor of Labor
DLGS60131 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60132 Special Assistant to the Secretary of Labor
DLGS60133 Chief of Staff to the Director of the Women's Bureau
DLGS60135 Special Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60137 Staff Assistant to the Executive Secretary
DLGS60139 Special Assistant to the Secretary of Labor
DLGS60141 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60146 Attorney Advisor to the Solicitor of Labor
DLGS60147 Attorney Adviser to the Solicitor of Labor
DLGS60163 Chief of Staff to the Assistant Secretary for Occupational Safety and Health
DLGS60169 Deputy Director, Executive Secretariat to the Executive Secretary
DLGS60170 Special Assistant to the Secretary of Labor
DLGS60171 Deputy Director of Advance to the Director of Operations
DLGS60172 Special Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60177 Special Assistant to the Assistant Secretary for Employee Benefits Security
DLGS60179 Senior Advisor to the Assistant Secretary for Employment Standards
DLGS60181 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60183 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60185 Deputy Director to the Director, Office of Faith Based and Community Initiatives
DLGS60187 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60190 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60192 Chief of Staff to the Assistant Secretary for Employee Benefits Security
DLGS60196 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60197 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60201 Special Assistant to the Secretary of Labor
DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60205 Deputy Director, 21st Century Workforce to the Director, 21st Century Workforce
DLGS60208 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60209 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60210 Deputy Director to the Director, Office of Faith Based and Community Initiatives
DLGS60211 Special Assistant to the Director of Scheduling
DLGS60214 Staff Assistant to the Secretary of Labor
DLGS60218 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60221 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60222 Special Assistant to the Assistant Secretary for Disability Employment Policy
DLGS60225 Staff Assistant to the Assistant Secretary for Public Affairs
DLGS60229 Chief of Staff to the Assistant Secretary for Disability Employment Policy
DLGS60230 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60231 Staff Assistant to the Counselor in the Office of the Secretary
DLGS60232 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60234 Chief of Staff to the Assistant Secretary for Policy
DLGS60235 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60236 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60237 Special Assistant to the Secretary of Labor
DLGS60240 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60246 Staff Assistant to the Director, 21st Century Workforce
DLGS60247 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60248 Special Assistant to the Director of Public Liaison
DLGS60250 Deputy Director of Scheduling to the Director of Scheduling
DLGS60251 Director of Scheduling to the Chief of Staff
DLGS60252 Special Assistant to the Director, 21st Century Workforce
DLGS60253 Special Assistant to the Deputy Secretary of Labor
DLGS60254 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60255 Special Assistant to the Executive Assistant to the Secretary
DLGS60256 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60261 Special Assistant to the Deputy Assistant Secretary for Mine Safety and Health
DLGS60264 Chief of Staff to the Wage and Hour Administrator
DLGS60267 Speechwriter to the Assistant Secretary for Public Affairs
DLGS60270 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60272 Special Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60273 Special Assistant to the Chief Information Officer to the Assistant Secretary for Administration and Management
DLGS60277 Special Assistant to the Assistant Secretary for Administration and Management

Section 213.3316 Department of Health and Human Services

DHGS00009 Senior Advisor to the Deputy Secretary, Health and Human Services
DHGS00268 Special Assistant to the Executive Secretary to the Department
DHGS00269 Chief Acquisitions Officer to the Assistant Secretary for Administration and Management
DHGS60004 Director, Secretary's Prevention Initiatives to the Assistant Secretary, Health
DHGS60005 Confidential Assistant to the Assistant Secretary for Aging (Commissioner for Aging)
DHGS60006 Confidential Assistant to the Assistant Secretary for Public Affairs
DHGS60007 Special Assistant to the Associate Commissioner for External Relations

DHGS60008 Senior Advisor to the Assistant Secretary for Children and Families to the Assistant Secretary for Children and Families
DHGS60009 Special Assistant to the Assistant Secretary for Public Health Emergency Preparedness
DHGS60010 Confidential Assistant (Faith-Based) to the Director, Center for Faith Based and Community Initiatives
DHGS60014 Director, Correspondence Control Center to the Executive Secretary to the Department
DHGS60017 Director of Scheduling to the Chief of Staff
DHGS60019 Deputy Director of Medicare Outreach and Special Advisor to the Secretary to the Director of Medicare Outreach
DHGS60020 Senior Advisor to the Assistant Secretary for Health to the Assistant Secretary, Health
DHGS60021 Special Assistant to the Director, Office of Community Services to the Director Office of Community Services
DHGS60023 Special Assistant to the Director, Center for Disease Control and Prevention Administration
DHGS60026 Special Assistant to the Director, Office of External Affairs to the Director, Office of External Affairs
DHGS60027 Deputy Director for Scheduling to the Director of Scheduling
DHGS60028 Special Assistant to the Chief of Staff
DHGS60029 Special Assistant to the Assistant Secretary for Public Affairs
DHGS60030 Special Assistant to the General Counsel
DHGS60033 Special Assistant to the Assistant Secretary for Administration and Management
DHGS60034 Senior Advisor to the Administrator, Substance Abuse and Mental Health Service
DHGS60035 Confidential Assistant to the Administrator Centers for Medicare and Medicaid Services
DHGS60057 Special Assistant to the Director Office of Refugee Resettlement
DHGS60059 Deputy Director for Regional Outreach and Operations to the Director of Intergovernmental Affairs
DHGS60127 Confidential Assistant to the Administrator Centers for Medicare and Medicaid Services
DHGS60129 Special Assistant to the Administrator Centers for Medicare and Medicaid Services
DHGS60133 Special Assistant to the Assistant Secretary for Budget, Technology and Finance
DHGS60168 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Planning and Budget)
DHGS60169 Special Assistant to the Assistant Secretary for Public Affairs
DHGS60236 Secretary's Regional Representative for Intergovernmental Affairs to the Director of Intergovernmental Affairs
DHGS60237 Regional Director, New York, New York, Region II to the Director of Intergovernmental Affairs
DHGS60243 Regional Director, Atlanta, Georgia, Region IV to the Director of Intergovernmental Affairs
DHGS60244 Regional Director, Seattle, Washington, Region X to the Director of Intergovernmental Affairs
DHGS60247 Regional Director, Philadelphia, Region III to the Director of Intergovernmental Affairs
DHGS60252 Regional Director, Denver, Colorado, Region VIII to the Director of Intergovernmental Affairs
DHGS60255 Regional Director, Chicago, Illinois-Region V to the Director of Intergovernmental Affairs
DHGS60293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
DHGS60345 Director of Public Affairs to the Assistant Secretary for Children and Families
DHGS60347 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
DHGS60363 Director, Congressional Liaison Office to the Assistant Secretary for Legislation
DHGS60374 Confidential Assistant to the Executive Secretary to the Department
DHGS60399 Special Assistant to the Assistant Secretary for Children and Families
DHGS60412 Regional Director, San Francisco, California. Region IX to the Director of Intergovernmental Affairs
DHGS60417 Regional Director, Kansas City, Missouri, Region VII to the Director of Intergovernmental Affairs
DHGS60427 Executive Director, President's Committee for People with Intellectual Disabilities to the Assistant Secretary for Children and Families
DHGS60436 Associate Commissioner to the Assistant Secretary for Children and Families
DHGS60485 Director of Communications to the Assistant Secretary, Health
DHGS60497 Special Assistant for International and Immigration Issues to the Assistant Secretary for Children and Families
DHGS60513 Special Assistant to the Commissioner for Child Support Enforcement to the Director of Public Affairs
DHGS60519 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
DHGS60523 Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary, Health
DHGS60526 Confidential Assistant to the Deputy Secretary to the Deputy Secretary, Health and Human Services
DHGS60527 Confidential Assistant (Scheduling) to the Director of Scheduling
DHGS60528 Confidential Assistant (Scheduling) to the Director of Scheduling
DHGS60548 Senior Speechwriter to the Assistant Secretary for Public Affairs
DHGS60549 Speechwriter to the Assistant Secretary for Public Affairs
DHGS60553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
DHGS60570 Confidential Assistant (Advance) to the Deputy Director for Advance
DHGS60627 Confidential Assistant to the Administrator, Substance Abuse and Mental Health Service
DHGS60629 Executive Director, President's Commission of HIV/AIDS to the Assistant Secretary, Health
DHGS60632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
DHGS60636 Senior Advisor to the Director, Indian Health Service to the Director, Indian Health Service
DHGS60665 Deputy Director for Policy, Intergovernmental Affairs to the Director of Intergovernmental Affairs
DHGS60675 Special Assistant to the Assistant Secretary for Aging (Commissioner for Aging)
DHGS60681 Confidential Assistant to the Director of Media Affairs
DHGS60689 Director of Media Affairs to the Director, Office of External Affairs
DHGS60695 Confidential Assistant (Briefing Book and Advance) to the Director of Scheduling
DHGS60697 Special Assistant to the Director of Medicare Outreach and Special Advisor to the Secretary

Section 213.3317 Department of Education

DBGS00081 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00198 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00204 Special Assistant to the Chief Financial Officer

DBGS00211 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
DBGS00284 Confidential Assistant (Protocol) to the Deputy Chief of Staff for Operations
DBGS00285 Special Assistant (Education Attache to the United States Mission to the United Nations Educational, Scientific and Cultural Organization) to the Secretary
DBGS00290 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS00299 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00303 Director, White House Initiative on Hispanic Education to the Chief of Staff
DBGS00306 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00331 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
DBGS00339 Confidential Assistant to the Deputy Secretary of Education
DBGS00344 Special Assistant to the Deputy Assistant Secretary
DBGS00345 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00348 Confidential Assistant to the Director, Scheduling and Advance Staff
DBGS00359 Confidential Assistant to the Deputy Assistant Secretary for Enforcement
DBGS00373 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS00375 Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00376 Director, Scheduling and Advance Staff to the Chief of Staff
DBGS00377 Confidential Assistant to the Deputy Assistant Secretary
DBGS00379 Confidential Assistant to the Assistant Secretary for Postsecondary Education
DBGS00380 Special Assistant to the Assistant Secretary for Management
DBGS00390 Confidential Assistant to the Director, Scheduling and Advance Staff
DBGS00391 Confidential Assistant to the Secretary
DBGS00392 Special Assistant to the Deputy Chief of Staff for Policy and Programs
DBGS00394 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00396 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00399 Special Assistant to the Assistant Secretary for Civil Rights
DBGS00404 Special Assistant to the Deputy General Counsel for Departmental and Legislative Service
DBGS00405 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00410 Confidential Assistant to the Chief of Staff
DBGS00411 Special Assistant to the Chief of Staff
DBGS00412 Director, International Affairs Office to the Chief of Staff
DBGS00413 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00414 Deputy Assistant Secretary for Evaluation to the Assistant Secretary for Planning, Evaluation, and Policy Development
DBGS00415 Confidential Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development
DBGS00416 Deputy Assistant Secretary to the Assistant Secretary for Vocational and Adult Education
DBGS00417 Confidential Assistant to the Deputy Chief of Staff for Strategy
DBGS00418 Confidential Assistant to the Deputy Secretary of Education
DBGS00423 Secretary's Regional Representative to the Director, Regional Services
DBGS00424 Secretary's Regional Representative to the Director, Regional Services
DBGS00425 Secretary's Regional Representative to the Director, Regional Services
DBGS00427 Secretary's Regional Representative to the Director, Regional Services
DBGS00428 Confidential Assistant to the Deputy Assistant Secretary for External Affairs and Outreach Services
DBGS00429 Confidential Assistant to the Chief of Staff
DBGS00431 Press Secretary to the Chief of Staff
DBGS00432 Confidential Assistant to the Chief of Staff
DBGS00435 Special Assistant to the Chief of Staff
DBGS00437 Special Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00442 Confidential Assistant to the Director, Regional Services
DBGS00446 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region 3
DBGS00447 Secretary's Regional Representative, Region 3 to the Director, Regional Services
DBGS00451 Secretary's Regional Representative, Region 5 to the Director, Regional Services
DBGS00452 Secretary's Regional Representative, Region 7 to the Director, Regional Services
DBGS00453 Secretary's Regional Representative, Region 8 to the Director, Regional Services
DBGS00454 Deputy Secretary's Regional Representative, Region 8 to the Director, Regional Services
DBGS00455 Deputy Secretary's Regional Representative, Region X to the Director, Regional Services
DBGS00457 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00458 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00459 Special Assistant to the Deputy Assistant Secretary for Communication Development
DBGS00461 Special Assistant to the Chief of Staff
DBGS00462 Special Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00463 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00464 Special Assistant to the Chief of Staff
DBGS00465 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00466 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00467 Director, Faith-Based and Community Initiatives Center to the Chief of Staff
DBGS00468 Special Assistant to the Deputy Assistant Secretary for External Affairs and Outreach Services
DBGS00469 Special Assistant to the Chief of Staff
DBGS00473 Secretary's Regional Representative, Region 6 to the Director, Regional Services
DBGS00474 Deputy Secretary's Regional Representative, Region 6 to the Director, Regional Services
DBGS00475 Confidential Assistant to the Director, White House Initiative on Tribal Colleges and Universities
DBGS00476 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00477 Deputy Secretary's Regional Representative, Region 4 to the Director, Regional Services
DBGS00478 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00479 Special Assistant to the Assistant Secretary for Elementary and Secondary Education

DBGS00481 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00482 Executive Director to the Chief of Staff
DBGS00483 Special Assistant to the Director, International Affairs Office
DBGS00484 Special Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00485 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00487 Deputy Assistant Secretary (Senate) to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00488 Executive Assistant to the Assistant Secretary for Postsecondary Education
DBGS00489 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS00490 Deputy Assistant Secretary for Media Relations and Strategic Communications to the Assistant Secretary, Office of Communications and Outreach
DBGS00491 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00492 Deputy Assistant Secretary for Policy and Strategic Initiatives to the Assistant Secretary for Elementary and Secondary Education
DBGS00494 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS00495 Confidential Assistant to the Chief of Staff
DBGS00496 Special Assistant to the Assistant Secretary for Management
DBGS00497 Deputy Assistant Secretary for Policy and State Technical Assistance to the Assistant Secretary for Elementary and Secondary Education
DBGS00499 Director, Intergovernmental Affairs to the Deputy Assistant Secretary for External Affairs and Outreach Services
DBGS00500 Confidential Assistant to the Chief of Staff
DBGS00501 Special Assistant to the Deputy Secretary of Education
DBGS00502 Deputy Assistant Secretary for Policy to the Assistant Secretary for Planning, Evaluation, and Policy Development
DBGS00503 Deputy Secretary's Regional Representative, Region 1 to the Director, Regional Services
DBGS00505 Deputy Secretary's Regional Representative, Region 6 to the Director, Regional Services
DBGS00507 Confidential Assistant to the General Counsel
DBGS00508 Deputy Director, Office of English Language Acquisition to the Assistant Deputy Secretary and Director, Office of English Language Acquisition
DBGS00509 Executive Director, White House Initiative on Historically Black Colleges and Universities to the Chief of Staff
DBGS00510 Special Assistant to the Director, Intergovernmental Affairs
DBGS00511 Confidential Assistant to the Director, International Affairs Office
DBGS00512 Special Assistant to the Deputy Assistant Secretary for External Affairs and Outreach Services
DBGS00513 Special Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development
DBGS00514 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00518 Special Assistant to the Director, Regional Services
DBGS00519 Confidential Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications
DBGS00521 Deputy Chief of Staff for Strategy to the Chief of Staff
DBGS00522 Confidential Assistant to the Chief of Staff
DBGS00523 Director, White House Liaison to the Chief of Staff
DBGS00524 Special Assistant to the Chief of Staff to the Deputy Secretary
DBGS00527 Confidential Assistant to the Director, Scheduling and Advance Staff
DBGS00532 Special Assistant to the Director, Office of Educational Technology
DBGS00533 Special Assistant to the Director, White House Liaison
DBGS00536 Confidential Assistant to the Deputy Assistant Secretary
DBGS60077 Special Assistant to the Director, Office of Scheduling and Briefing
DBGS60143 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS60151 Special Assistant to the Chief of Staff
DBGS60174 Special Assistant to the Chief Financial Officer

Section 213.3318 Environmental Protection Agency

EPGS00922 Associate Assistant Administrator to the Assistant Administrator for Research and Development
EPGS03500 Senior Policy Advisor to the Deputy Assistant Administrator for Water
EPGS04025 Counselor to the Administrator for Agricultural Policy
EPGS04029 Special Assistant to the Deputy Chief of Staff to the Administrator (Operations)
EPGS05005 Deputy to the Press Secretary to the Deputy Associate Administrator
EPGS05006 Speech Writer to the Deputy Associate Administrator
EPGS05007 Associate Director, Office of Executive Secretariat to the Chief of Staff
EPGS05011 Confidential Assistant to the Deputy Administrator
EPGS05012 Program Advisor to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS05018 Deputy Associate Administrator for Office of Congressional Affairs to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS05019 Program Advisor (Media Relations) to the Associate Administrator for Public Affairs
EPGS05028 Public Liaison Officer to the Deputy Chief of Staff (Operations)
EPGS05031 Program Specialist to the Assistant Administrator for Administration and Resources Management
EPGS05036 Program Advisor, Office of Public Affairs to the Deputy Chief of Staff (Operations)
EPGS06000 Senior Policy Advisor to the Regional Administrator
EPGS06001 Confidential Assistant to the Chief of Staff
EPGS06002 Program Manager (Operations) to the Deputy Chief of Staff (Operations)
EPGS06003 Special Assistant to the Scheduler to the Deputy Chief of Staff (Operations)
EPGS06004 Program Advisor (Media Relations) to the Deputy Chief of Staff (Operations)
EPGS06005 Special Assistant to the Associate Administrator for Public Affairs
EPGS06007 Deputy Speech Writer to the Associate Administrator for Public Affairs
EPGS06008 Advance Specialist to the Deputy Chief of Staff (Operations)
EPGS06009 Press Secretary to the Associate Administrator for Public Affairs
EPGS06010 Senior Advance Specialist to the Deputy Chief of Staff (Operations)
EPGS06011 Program Specialist to the Assistant Administrator for Environmental Information
EPGS06012 Director of Advance to the Deputy Chief of Staff (Operations)
EPGS06013 Strategic Scheduler to the Deputy Chief of Staff (Operations)
EPGS06014 Audio Visual Producer to the Deputy Chief of Staff (Operations)

EPGS06015 Staff Secretary to the Chief of Staff
EPGS06016 Advance Specialist to the Deputy Chief of Staff (Operations)
EPGS60065 Recycling Communications Advisor to the Deputy Director, Office of Solid Waste
EPGS60069 Special Assistant for Communications to the Assistant Administrator for Water
EPGS60071 Senior Advisor to the Assistant Administrator for International Activities
EPGS60074 Policy Analyst to the Assistant Administrator for Air and Radiation
EPGS60076 Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60082 Special Assistant to the Associate Administrator to the Administrator
EPGS60089 Senior Advisor to the Chief Financial Officer
EPGS60092 Associate Assistant Administrator to the Assistant Administrator for Air and Radiation

Section 213.3323 Overseas Private Investment Corporation

PQGS05007 Special Assistant to Vice President Investment Funds to the Vice President, Investment Funds
PQGS05017 Confidential Assistant to the Chief of Staff
PQGS06001 Confidential Assistant to the Deputy Chief and Senior Advisor to the President
PQGS60018 Executive Assistant to the President
PQGS60020 Executive Assistant to the Executive Vice President

Section 213.3325 United States Tax Court

JCGS60040 Secretary (Confidential Assistant) to the Chief Judge
JCGS60041 Secretary (Confidential Assistant) to the Chief Judge
JCGS60043 Secretary (Confidential Assistant) to the Chief Judge
JCGS60044 Secretary (Confidential Assistant) to the Chief Judge
JCGS60045 Secretary (Confidential Assistant) to the Chief Judge
JCGS60046 Secretary (Confidential Assistant) to the Chief Judge
JCGS60047 Secretary (Confidential Assistant) to the Chief Judge
JCGS60048 Secretary (Confidential Assistant) to the Chief Judge
JCGS60049 Secretary (Confidential Assistant) to the Chief Judge
JCGS60050 Secretary (Confidential Assistant) to the Chief Judge
JCGS60051 Secretary (Confidential Assistant) to the Chief Judge
JCGS60052 Secretary (Confidential Assistant) to the Chief Judge
JCGS60053 Secretary (Confidential Assistant) to the Chief Judge
JCGS60054 Secretary (Confidential Assistant) to the Chief Judge
JCGS60055 Secretary (Confidential Assistant) to the Chief Judge
JCGS60056 Secretary (Confidential Assistant) to the Chief Judge
JCGS60057 Secretary (Confidential Assistant) to the Chief Judge
JCGS60058 Secretary (Confidential Assistant) to the Chief Judge
JCGS60059 Secretary (Confidential Assistant) to the Chief Judge
JCGS60060 Secretary (Confidential Assistant) to the Chief Judge
JCGS60061 Secretary (Confidential Assistant) to the Chief Judge
JCGS60062 Secretary (Confidential Assistant) to the Chief Judge
JCGS60063 Secretary (Confidential Assistant) to the Chief Judge
JCGS60064 Secretary (Confidential Assistant) to the Chief Judge
JCGS60065 Secretary (Confidential Assistant) to the Chief Judge
JCGS60066 Trial Clerk to the Chief Judge
JCGS60067 Trial Clerk to the Chief Judge
JCGS60068 Trial Clerk to the Chief Judge
JCGS60070 Trial Clerk to the Chief Judge
JCGS60071 Trial Clerk to the Chief Judge
JCGS60073 Trial Clerk to the Chief Judge
JCGS60075 Trial Clerk to the Chief Judge
JCGS60077 Trial Clerk to the Chief Judge
JCGS60078 Trial Clerk to the Chief Judge
JCGS60079 Trial Clerk to the Chief Judge

Section 213.3327 Department of Veterans Affairs

DVGS00100 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs
DVGS60006 Special Assistant to the General Counsel
DVGS60011 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60015 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60031 Senior Advisor to the Deputy Secretary of Veterans Affairs
DVGS60032 Director, Center for Faith Based Community Initiatives to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60036 Protocol Liaison Officer to the Secretary of Veterans Affairs
DVGS60038 Special Assistant to the Deputy Secretary of Veterans Affairs
DVGS60050 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60055 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs
DVGS60056 Special Assistant to the Senior Advisor
DVGS60069 Special Assistant to the Secretary of Veterans Affairs
DVGS60098 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60106 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs

Section 213.3328 Broadcasting Board of Governors

IBGS00013 Chief of Staff to the Director Office of Cuba Broadcasting
IBGS00015 Senior Advisor to the Director
IBGS00018 Senior Projects Officer to the Director
IBGS00019 Special Assistant to the Director
IBGS00020 Special Assistant to the Chairman, Broadcasting Board of Governors

Section 213.3330 Securities and Exchange Commission

SEOT60002 Confidential Assistant to a Commissioner
SEOT60004 Director of Legislative Affairs to the Director of Communications
SEOT60007 Confidential Assistant to a Commissioner
SEOT60008 Secretary (Office Automation) to the Chief Accountant
SEOT60009 Secretary to the General Counsel of the Commission
SEOT60012 Investor Advocate to the Chairman
SEOT60016 Secretary to the Director, Division of Enforcement
SEOT60029 Secretary to the Director, Division of Market Regulation
SEOT60056 Legislative Affairs Specialist to the Director of Communications
SEOT60057 Legislative Affairs Specialist to the Director of Legislative Affairs
SEOT60060 Confidential Assistant to a Commissioner
SEOT90001 Senior Advisor to the Chairman
SEOT90002 Senior Advisor to the Chairman
SEOT90003 Senior Advisor to the Chairman
SEOT90004 Confidential Assistant to the Chairman
SEOT90005 Speechwriter to the Chairman

SEOT90006 Confidential Assistant to a Commissioner

Section 213.3331 Department of Energy

DEGS00318 Advisor, Legislative Affairs to the Principal Deputy Assistant Secretary
DEGS00329 Congressional Affairs Officer to the Director of Congressional, Intergovernmental and Public Affairs
DEGS00393 Policy Advisor to the Director Office of Worker and Community Transition
DEGS00395 Special Assistant to the Secretary, Department of Energy
DEGS00402 Senior Advance Representative to the Director, Office of Scheduling and Advance
DEGS00403 Special Assistant to the Chief of Staff
DEGS00407 Daily Scheduler to the Director, Office of Scheduling and Advance
DEGS00408 Director, Office of Technology Advancement and Outreach to the Principal Deputy Assistant Secretary
DEGS00409 Special Assistant to the Director, Public Affairs
DEGS00423 Legislative Specialist to the Deputy Assistant Secretary for Intergovernmental and External Affairs
DEGS00424 Senior Policy Advisor to the Associate Deputy Secretary of Energy
DEGS00439 Policy Advisor to the Principal Deputy Assistant Secretary for Fossil Energy
DEGS00440 Special Assistant to the Director, Office of Civilian Radioactive Waste Management
DEGS00441 Senior Advisor to the Assistant Secretary for Policy and International Affairs
DEGS00443 Senior Policy Advisor to the Principal Deputy Assistant Secretary for Fossil Energy
DEGS00450 Special Assistant for Communications to the Director, Office of Technology Advancement and Outreach
DEGS00453 Special Assistant to the Director, Office of Scheduling and Advance
DEGS00455 Special Assistant for Travel and Advance to the White House Liaison
DEGS00456 Special Assistant to the Assistant Secretary for Environment, Safety and Health
DEGS00459 Associate Deputy Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00464 Special Assistant to the Director, Office of Electricity and Energy Assurance
DEGS00466 Special Assistant to the Deputy Administrator for Defense Nuclear Nonproliferation
DEGS00468 Special Assistant for Technology Advancement and Outreach to the Director, Office of Technology Advancement and Outreach
DEGS00469 Advance Representative to the Director, Office of Scheduling and Advance
DEGS00472 Communications Director to the Director, Office of Civilian Radioactive Waste Management
DEGS00475 Press Secretary to the Director, Public Affairs
DEGS00477 Policy Advisor to the Director, Office of Science
DEGS00479 Deputy Assistant Secretary for Environment and Science to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00480 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for Policy and International Affairs
DEGS00482 Policy Advisor to the Assistant Secretary for Environment, Safety and Health
DEGS00485 Director, Office of Scheduling and Advance to the Chief of Staff
DEGS00487 Small Business Analyst to the Associate Director
DEGS00488 Special Assistant to the Director, Office of Science
DEGS00489 Special Assistant to the Deputy Secretary to the Deputy Secretary of Energy
DEGS00490 Special Assistant to the Chief of Staff
DEGS00491 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00492 Strategic Communications Advisor to the Assistant Secretary for Policy and International Affairs
DEGS00493 Senior Policy Advisor to the Director, Office of Management
DEGS00494 Associate Deputy Director to the Associate Director
DEGS00495 Senior Counsel to the General Counsel
DEGS00496 Associate Deputy Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00497 Senior Advisor for External Affairs to the Director of Congressional; Intergovernmental and Public Affairs
DEGS00498 Special Advisor for Public Affairs to the Director of Congressional, Intergovernmental and Public Affairs
DEGS00502 Senior Advisor for Intergovernmental and External Affairs to the Deputy Assistant Secretary for Intergovernmental and External Affairs
DEGS00505 Speechwriter to the Director, Public Affairs
DEGS00506 Special Program Assistant to the Assistant Secretary of Energy (Environmental Management)
DEGS00507 Intergovernmental and Tribal Affairs Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00508 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00509 Staff Assistant to the General Counsel
DEGS00510 Advance Representative to the Director, Office of Scheduling and Advance
DEGS00512 Deputy Press Secretary to the Director, Public Affairs
DEGS00513 Senior Advisor/Director of Strategic Initiatives to the Secretary, Department of Energy
DEGS00514 Special Assistant to the Assistant Secretary for Environment, Safety and Health
DEGS00518 Legislative Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00519 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00520 Policy Advisor to the Deputy Assistant Secretary for Natural Gas and Petroleum Technology
DEGS00521 Special Assistant to the White House Liaison
DEGS00523 Trip Coordinator to the Director, Office of Scheduling and Advance
DEGS00524 Assistant Press Secretary to the Director, Public Affairs
DEGS00525 Deputy White House Liaison to the White House Liaison
DEGS60121 Special Assistant to the Director, Office of Scheduling and Advance
DEGS60134 Special Assistant to the Assistant Secretary for Fossil Energy
DEGS60140 Senior Advisor to the Director, Nuclear Energy
DEGS60212 Senior Advisor, Communications to the Assistant Secretary (Energy Efficiency and Renewable Energy)
DEGS60222 Special Assistant to the Secretary, Department of Energy
DEGS60233 Special Assistant to the Assistant Secretary for Policy and International Affairs
DEGS60253 Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS60265 Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science

DEGS60276 Senior Policy Advisor to the Director, Office of Science

Federal Energy Regulatory Commission

DRGS60001 Regulatory Policy Analyst to the Director, Markets, Tariffs, and Rates
RGS60003 Confidential Assistant to a Member, Federal Energy Regulatory Commission
DRGS60004 Director, Public Affairs to the Deputy Director, External Affairs
RGS60005 Intergovernmental Affairs Specialist to the Deputy Director, External Affairs

Section 213.3332 Small Business Administration

SBGS00540 Director of Small Business Administration's Center for Faith-Based and Community Initiatives to the Chief of Staff and Chief Operating Officer
SBGS00553 Associate Administrator for International Trade to the Associate Deputy Administrator for Capital Access
SBGS00567 Policy Analyst to the Associate Administrator for Policy
SBGS00568 Speechwriter to the Associate Administrator for Communications and Public Liaison
SBGS00569 Special Assistant to the Chief of Staff and Chief Operating Officer
SBGS00572 Regional Administrator (Region 2) to the Associate Administrator for Field Operations
SBGS00574 Assistant Administrator for Field Operations to the Associate Administrator for Field Operations
SBGS00576 Deputy Associate Administrator to the Associate Administrator for Communications and Public Liaison
SBGS00578 Regional Administrator (Region 1) to the Associate Administrator for Field Operations
SBGS00579 Special Assistant to the Associate Administrator for Field Operations
SBGS00581 Press Secretary to the Associate Administrator for Communications and Public Liaison
SBGS00584 Policy Analyst to the Associate Administrator for Policy
SBGS00586 Special Assistant to the Deputy Administrator
SBGS00587 Senior Advisor for Policy and Planning to the Associate Administrator for Policy
SBGS00588 Director, External Affairs to the Associate Administrator for Strategic Alliances
SBGS00593 Deputy Associate Administrative for Congressional and Legislative Affairs to the Associate Administrator for Congressional and Legislative Affairs
SBGS00597 Director of Scheduling to the Chief of Staff and Chief Operating Officer
SBGS00598 Special Assistant to the Associate Administrator for Strategic Alliances
SBGS00599 Assistant Administrator for Policy and Planning to the Associate Administrator for Policy
SBGS60003 National Director for Native American Affairs to the Associate Deputy Administrator for Entrepreneurial Development
SBGS60160 Senior Advisor to the Assistant Administrator for International Trade to the District Director
SBGS60170 Regional Administrator, Region VIII, Denver Colorado to the Assistant Inspector General for Inspections and Evaluation
SBGS60171 Regional Administrator, Region VII, Kansas City, Missouri to the District Director
SBGS60173 Regional Administrator, Region VI, Dallas, Texas to the District Director
SBGS60174 Regional Administrator to the Associate Administrator for Field Operations
SBGS60175 Regional Administrator to the District Director
SBGS60178 Regional Administrator, Region III, Philadelphia, Pennsylvania to the Associate Administrator for Field Operations
SBGS60188 Regional Administrator, Region IX, San Francisco to the Administrator
SBGS60189 Regional Administrator, Region 10, Seattle Washington to the Associate Administrator for Field Operations
SBGS60356 Special Assistant to the Associate Administrator for Strategic Alliances
SBGS60543 Associate Administrator for Policy to the Administrator
SBGS60558 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs

Section 213.3333 Federal Deposit Insurance Corporation

FDOT00010 Chief of Staff to the Chairman of the Board of Directors (Director)
FDOT00012 Director for Public Affairs to the Chairman of the Board of Directors (Director)

Section 213.3334 Federal Trade Commission

FTGS60001 Director, Office of Public Affairs to the Chairman
FTGS60006 Congressional Liaison Specialist to the Chairman
FTGS60026 Confidential Assistant to a Commissioner
FTGS60027 Confidential Assistant to a Commissioner

Section 213.3337 General Services Administration

GSGS00063 Director of Marketing to the Deputy Associate Administrator for Communications
GSGS00084 Special Assistant to the Regional Administrator, Region VI, Kansas City
GSGS00087 Special Assistant to the Regional Administrator, (Region IX-San Francisco)
GSGS00099 Senior Advisor to the Regional Administrator, Region 3, Philadelphia, Pennsylvania
GSGS00122 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00130 Senior Advisor to the Regional Administrator, Region 7, Fort Worth, Texas
GSGS00132 Special Assistant to the Regional Administrator, Region 10, Auburn, Washington
GSGS00158 Confidential Assistant to the Associate Administrator for Small Business Utilization
GSGS00159 Deputy Director for Communications to the Deputy Associate Administrator for Communications
GSGS00161 Public Affairs Specialist to the Deputy Director for Communications
GSGS00163 Special Assistant to the Associate Administrator for Performance Improvement
GSGS00165 Senior Advisor to the Chief Acquisition Officer
GSGS00167 Confidential Assistant to the Chief Acquisition Officer
GSGS00172 Senior Advisor to the Commissioner, Public Buildings Service
GSGS00173 Senior Advisor to the Chief Acquisition Officer
GSGS00174 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00176 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60024 Special Assistant to the Commissioner, Public Buildings Service
GSGS60069 Events Management Specialist to the Deputy Director for Communications
GSGS60079 Senior Advisor to the Regional Administrator, Region 2, New York
GSGS60082 Senior Advisor to the Regional Administrator, Region 4, Atlanta, Georgia

GSGS60100 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60103 Confidential Assistant to the Administrator
GSGS60113 Special Assistant to the Regional Administrator Region 1, Boston
GSGS60119 Senior Advisor to the Deputy Regional Administrator
GSGS60127 Associate Administrator for Small Business Utilization to the Administrator

Section 213.3338 Federal Communications Commission

FCGS03051 Deputy Director, Office of Media Relations to the Chief of Staff
FCGS60005 Special Assistant to the Director, Office of Legislative Affairs

Section 213.3339 United States International Trade Commission

TCGS00010 Staff Assistant (Legal) to a Commissioner
TCGS00012 Confidential Assistant to a Commissioner
TCGS00013 Staff Assistant (Economics) to the Vice Chairman
TCGS00033 Staff Assistant to a Commissioner
TCGS00037 Staff Assistant to a Commissioner
TCGS60015 Executive Assistant to the Vice Chairman
TCGS60018 Staff Assistant (Legal) to a Commissioner
TCGS60019 Staff Assistant (Legal) to a Commissioner
TCGS60036 Executive Assistant to the Chairman
TCGS60100 Senior Economist to a Commissioner
TCGS60101 Executive Assistant to the Vice Chairman

Section 213.3340 National Archives and Records Administration

NQGS60003 Presidential Diarist to the Archivist of the United States

Section 213.3343 Farm Credit Administration

FLOT00028 Director, Congressional and Public Affairs to the Chairman, Farm Credit Administration Board
FLOT00054 Chief of Staff to the Chairman, Farm Credit Administration Board
FLOT00080 Executive Assistant to Member to the Chairman, Farm Credit Administration Board

Section 213.3344 Occupational Safety and Health Review Commission

SHGS00002 Confidential Assistant to the Commission Member (Chairman)
SHGS00003 Confidential Assistant to the Commission Member
SHGS60008 Counsel to a Commission Member

Section 213.3346 Selective Service System

SSGS00001 Public Affairs Specialist to the Director
SSGS03359 Executive Officer/Chief of Staff to the Director, Selective Service System
SSGS03363 Deputy Director to the Director, Selective Service System
SSGS03373 Administrative Assistant to the Director, Selective Service System

Section 213.3348 National Aeronautics and Space Administration

NNGS00022 International Program Specialist to the Chief of Staff
NNGS00044 Legislative Affairs Specialist to the Assistant Administrator for Legislative Affairs
NNGS00141 Executive Assistant to the Chief, Financial Officer/Chief Acquisition Officer
NNGS00155 Executive Assistant to the Chief of Strategic Communications
NNGS00157 Special Assistant (Correspondence) to the Administrator
NNGS00165 Senior Press Specialist to the Assistant Administrator for Public Affairs
NNGS00166 Executive Assistant to the Chief of Staff
NNGS00168 Editor to the Assistant Administrator for Public Affairs
NNGS02317 Special Assistant to the Inspector General
NNGS60020 Writer-Editor to the Assistant Administrator for Public Affairs

Section 213.3351 Federal Mine Safety and Health Review Commission

FRGS60024 Confidential Assistant to the Chairman

Section 213.3352 Government Printing Office

GPOT00004 Public Affairs Specialist to the Deputy Chief of Staff

Section 213.3353 Merit Systems Protection Board

MPGS00002 Confidential Assistant to a Member
MPGS00003 Confidential Assistant to a Board Member
MPGS60010 Confidential Assistant to the Chairman

Section 213.3355 Social Security Administration

SZGS00011 Special Assistant to the Deputy Commissioner of Social Security
SZGS00015 Confidential Assistant to the Chief of Staff
SZGS00016 Special Assistant to the Chief of Staff
SZGS00017 Associate Commissioner for External Affairs to the Deputy Commissioner for Communications
SZGS00018 Special Assistant to the Chief of Staff
SZGS60012 Executive Editor to the Associate Commissioner for Retirement Policy

Section 213.3356 Commission on Civil Rights

CCGS00017 Special Assistant to a Commissioner
CCGS60013 Special Assistant to a Commissioner
CCGS60029 Special Assistant to a Commissioner
CCGS60033 Special Assistant to a Commissioner

Section 213.3357 National Credit Union Administration

CUOT00025 Staff Assistant to a Board Member
CUOT00026 Staff Assistant to the Vice Chair
CUOT00030 Associate Director of External Affairs to the Chairman
CUOT01008 Senior Policy Advisor to a Board Member
CUOT01009 Senior Policy Advisor to a Board Member
CUOT01191 Senior Advisor and Chief of Staff to the Chairman

Section 213.3360 Consumer Product Safety Commission

PSGS00066 Supervisory Public Affairs Specialist to the Executive Director
PSGS00070 Special Assistant (Legal) to the Chairman, Consumer Product Safety Commission
PSGS60006 Special Assistant (Legal) to the Chairman, Consumer Product Safety Commission
PSGS60007 Director, Office of Congressional Relations to the Chairman, Consumer Product Safety Commission
PSGS60010 Executive Assistant to a Commissioner
PSGS60014 General Counsel to the Chairman, Consumer Product Safety Commission
PSGS60049 Special Assistant (Legal) to a Commissioner
PSGS60061 Executive Assistant to a Commissioner
PSGS60062 Special Assistant (Legal) to a Commissioner
PSGS60063 Special Assistant (Legal) to a Commissioner

Section 213.3365 Chemical Safety and Hazard Investigation Board

FJGS60001 Special Assistant to the Chief Operating Officer

Section 213.3367 Federal Maritime Commission

MCGS60003 Counsel to the Commissioner to a Member
MCGS60006 Counsel to the Commissioner to a Member
MCGS60042 Counsel to a Member

Section 213.3370 Millennium Challenge Corporation

CMOT00001 Executive Assistant to the Chief Executive Officer

Section 213.3373 Trade and Development Agency

TDGS00004 Public Affairs Specialist to the Director

Section 213.3376 Appalachian Regional Commission

APGS00004 Confidential Policy Advisor to the Federal Co-Chairman
APGS00005 Policy Advisor to the Federal Co-Chairman

Section 213.3377 Equal Employment Opportunity Commission

EEGS60008 Confidential Assistant to the Chairman, Equal Employment Opportunity Commission

Section 213.3379 Commodity Futures Trading Commission

CTGS00034 Chief of Staff to the Chairperson
CTGS00091 Chief Economist to the Chairperson
CTGS60001 Administrative Assistant to the Chief of Staff
CTGS60004 Administrative Assistant to the Commissioner
CTGS60007 Administrative Assistant to the Commissioner
CTGS60012 Special Assistant to the Commissioner
CTGS60014 Special Assistant to the Commissioner
CTGS60040 General Counsel to the Chairperson
CTGS60477 Attorney-Advisor (General) to a Commissioner
CTOT00033 Director, Office of External Affairs to the Chairperson

Section 213.3382 National Endowment for the Arts

NAGS00062 Counselor to the Chairman, National Endowment for the Arts
NAGS60049 Deputy Congressional Liaison to the Director, Office of Government Affairs
NAGS60077 Director of Communications to the Chairman, National Endowment for the Arts
NASL00001 Executive Director, Presidents Committee on the Arts and Humanities to the Chairman, National Endowment for the Arts

Section 213.3382 National Endowment for the Humanities

NHGS00079 Advisor to the Chairman
NHGS00080 Director of Congressional Affairs to the Chairman
NHGS60076 Director, We the People Program to the Deputy Chairman

Section 213.3384 Department of Housing and Urban Development

DUGS00032 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Public and Indian Housing
DUGS00041 Advance Coordinator to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS00044 Special Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60028 Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS60110 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60138 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS60151 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60168 Staff Assistant to the Chief of Staff
DUGS60174 Congressional Relations Officer to the Deputy Assistant Secretary for Congressional Relations
DUGS60175 Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60176 Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
DUGS60187 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60195 Staff Assistant to the Deputy Assistant Secretary for Economic Affairs
DUGS60206 Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60211 Staff Assistant to the Director of Executive Scheduling
DUGS60217 Special Policy Advisor to the Assistant Secretary for Policy Development and Research
DUGS60224 Regional Director, Seattle, Washington to the Deputy Secretary, Housing and Urban Development
DUGS60238 Special Assistant to the Regional Director
DUGS60240 Speechwriter to the Assistant Secretary for Public Affairs
DUGS60255 Special Assistant to the Assistant Secretary for Policy Development and Research
DUGS60272 Deputy Assistant Secretary for Economic Affairs to the Regional Director
DUGS60273 Staff Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60279 Associate Deputy Assistant Secretary for Fair Housing and Equal Opportunity to the Assistant Secretary for Fair Housing and Equal Opportunity
DUGS60281 Special Projects Officer to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60288 Congressional Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60319 Regional Director to the Assistant Deputy Secretary for Field Policy and Management
DUGS60340 Special Assistant to the Chief of Staff
DUGS60343 Special Assistant to Regional Director to the Regional Director
DUGS60354 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60357 Staff Assistant to the Chief of Staff
DUGS60366 Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing to the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing
DUGS60373 Media Outreach Specialist to the Assistant Secretary for Public Affairs
DUGS60385 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60390 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60391 Special Assistant to the Regional Director
DUGS60394 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60396 Staff Assistant to the Special Assistant for Office Operations
DUGS60410 Special Assistant to the General Counsel
DUGS60411 Special Assistant to the General Counsel
DUGS60416 Staff Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60421 Director, Office of Executive Scheduling and Operations to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60427 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer

DUGS60431 Regional Director, Kansas City, Kansas to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60447 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60456 Staff Assistant to the Assistant Secretary for Policy Development and Research
DUGS60458 Legislative Assistant to the Deputy Assistant Secretary for Intergovernmental Relations
DUGS60464 Special Projects Coordinator to the Regional Director
DUGS60470 Staff Assistant to the General Counsel
DUGS60482 Director, Center for Faith Based and Community Initiatives to the Director, Center for Faith Based and Community Initiatives
DUGS60489 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60505 Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60517 Regional Director to the Assistant Deputy Secretary for Field Policy and Management
DUGS60522 Deputy Assistant Secretary for Grant Programs to the Secretary, Housing and Urban Development
DUGS60542 Assistant to the Secretary and White House Liaison to the Secretary, Housing and Urban Development
DUGS60543 Staff Assistant to the Director, Center for Faith Based and Community Initiatives
DUGS60546 Special Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60571 Deputy Assistant for International Affairs to the Assistant Secretary for Policy Development and Research
DUGS60601 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60610 Staff Assistant to the President, Government National Mortgage Association
DUGS60620 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer

Section 213.3388 Presidents Commission on White House Fellowships

WHGS00016 Deputy Director, President's Commission on White House Fellowships to the Director, President's Commission on White House Fellowshipsst
WHGS00017 Education Director to the Director, President's Commission on White House Fellowships
WHGS00018 Special Assistant to the Director, President's Commission on White House Fellowships

Section 213.3389 National Mediation Board

NMGS60053 Confidential Assistant to a Member
NMGS60054 Confidential Assistant to a Member

Section 213.3391 Office of Personnel Management

PMGS00033 Chief, Office of Senate Affairs to the Director, Office of Congressional Relations
PMGS00043 White House Liaison to the Chief of Staff
PMGS00052 Special Counsel to the General Counsel
PMGS00056 Special Assistant to the Director, Office of Communications and Public Liaison
PMGS00057 Executive Director to the Council to the Executive Director and Senior Counselor
PMGS00059 Congressional Relations Officer to the Director, Office of Congressional Relations
PMGS30249 Congressional Relations Officer to the Director, Office of Congressional Relations
PMGS60010 Special Initiatives Coordinator to the Director, Office of Communications and Public Liaison
PMGS60013 Special Assistant to the Director, Office of Communications and Public Liaison
PMGS60017 Special Counselor to the General Counsel
PMGS60018 Special Assistant to the Director, Office of Communications and Public Liaison
PMGS60026 Scheduler and Special Assistant to the Executive Director and Senior Counselor

Section 213.3392 Federal Labor Relations Authority

FAGS60022 Executive Assistant to the Chairman

Section 213.3393 Pension Benefit Guaranty Corporation

BGSL00053 Director, Communications and Public Affairs Department to the Executive Director
BGSL00063 Deputy Executive Director, Office of Policy and External Affairs to the Deputy Executive Director, Office of Policy and External Affairs

Section 213.3394 Department of Transportation

DTGS60003 Special Assistant to the Secretary and Deputy Director for Scheduling and Advance to the Secretary
DTGS60017 Assistant to the Secretary for Policy to the Secretary
DTGS60055 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60069 Director of Communications to the Administrator
DTGS60117 Assistant to the Secretary for Policy to the Secretary
DTGS60139 Confidential Assistant to the Deputy Secretary
DTGS60159 Special Assistant to the Associate Administrator for Policy and Governmental Affairs
DTGS60173 Director of Congressional Affairs to the Administrator
DTGS60192 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DTGS60237 Deputy Director for Communications to the Assistant to the Secretary and Director of Public Affairs
DTGS60239 Director, Office of Congressional and Public Affairs to the Administrator
DTGS60243 Speechwriter to the Associate Director for Speechwriting
DTGS60274 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DTGS60277 Staff Assistant to the Administrator
DTGS60279 Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs
DTGS60292 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60294 Counselor to the Under Secretary to the Associate Deputy Secretary
DTGS60301 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60311 Special Assistant to the Director for Scheduling and Advance
DTGS60313 Director of External Affairs to the Administrator
DTGS60317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs
DTGS60341 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs

DTGS60342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DTGS60351 Counselor to the Deputy Secretary
DTGS60355 Director, Drug Enforcement and Program Compliance to the Chief of Staff
DTGS60357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DTGS60365 Special Assistant to the Assistant Secretary for Transportation Policy
DTGS60369 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60371 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60375 White House Liaison to the Chief of Staff
DTGS60376 Director, Office of Small and Disadvantaged Business Utilization to the Secretary
DTGS60377 Director of Congressional, International, and Public Affairs to the Deputy Administrator
DTGS60379 Special Assistant to the Director to the Assistant to the Secretary and Director of Public Affairs
DTGS60380 Associate Administrator for Governmental, International, and Public Affairs to the Administrator
DTGS60460 Director of Public Affairs to the Administrator

Section 213.3396 National Transportation Safety Board

TBGS60025 Special Assistant to the Vice Chairman
TBGS60033 Assistant to the Director, Natural Transportation Safety Board Academy for Special Projects to the Chairman
TBGS60105 Confidential Assistant to the Vice Chairman
TBGS60107 Confidential Assistant to a Member

Section 213.3397 Federal Housing Finance Board

FBOT00004 Counsel to the Chairman
FBOT00005 Staff Assistant to the Chairman
FBOT60006 Special Assistant to the Board of Directors
FBOT60009 Special Assistant to the Board of Directors

Authority: 5 U.S.C. 3301 and 3302; E.O.10577, 3 CFR 1954–1958 Comp., p. 18.

Office of Personnel Management.

Linda M. Springer,

Director.

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Federal Register

Wednesday,
October 4, 2006

Part III

Federal Trade Commission

16 CFR Part 310
Denial of Petition for Proposed Rulemaking; Revised Proposed Rule With Request for Public Comments; Revocation of Non-enforcement Policy; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN: 3084–0098

Telemarketing Sales Rule ("TSR")

AGENCY: Federal Trade Commission.

ACTION: Denial of petition for proposed rulemaking; revised proposed rule with request for public comments; revocation of non-enforcement policy.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") announces decisions on four issues involving the Telemarketing Sales Rule ("TSR"): the denial of a petition submitted by Voice Mail Broadcasting Corporation ("VMBC") requesting creation of a new safe harbor for the TSR that would permit the use of prerecorded messages in calls to established customers; a new proposal to amend the TSR by expressly prohibiting unsolicited prerecorded telemarketing calls without the consumer's prior written agreement; revocation of the Commission's previously announced policy of forbearance from bringing enforcement actions against sellers and telemarketers who make prerecorded telemarketing calls to established customers effective January 2, 2007; and a new proposal to amend the prescribed method for measuring the maximum allowable call abandonment rate in the TSR's existing safe harbor provision, in response to a petition from the Direct Marketing Association, Inc. ("DMA"). The Commission is requesting public comment on the proposed amendments during a comment period ending November 6, 2006.

DATES: Written comments must be received on or before November 6, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification, Project No. R411001" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by visiting the Web site at *https://secure.commentworks.com/ftc-tsr* 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 *https://secure.commentworks.com/ftc-tsr* Web site. You may also visit *http://www.regulations.gov* to read this Proposed Rule, and may file an electronic comment through that Web site. 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 Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. 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.htm*.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Staff Attorney, (202) 326–2970; Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

This document sets out the reasons for the Commission's decision to deny VMBC's petition for amendment of the TSR's call abandonment provisions to add a new safe harbor, and to seek public comment on amendments the Commission is now proposing in response to the record created by the VMBC and DMA petitions. These actions are based on a careful analysis of the public comments received in response to a Notice of Proposed Rulemaking ("NPRM") published in the **Federal Register** on November 17, 2004.[1] The NPRM generated nearly 13,600 unique comments—23 submitted by telemarketers and business trade associations representing numerous members, and the balance from consumers and consumer advocates.

Section 310.4(b)(1)(iv) of the TSR prohibits telemarketers from abandoning calls. An outbound telemarketing call is "abandoned" if the telemarketer does not connect the call to a sales representative within two seconds of the completed greeting of the person who answers. Call abandonment is an unavoidable consequence of the use of "predictive dialers"—telemarketing equipment that increases the productivity of telemarketers by placing multiple calls for each available sales representative. Predictive dialers maximize the amount of time representatives spend speaking with consumers and minimize the time they spend waiting to speak to a prospective customer. An inevitable side effect of this functionality, however, is that the dialer will reach more consumers than can be connected to available sales representatives. In these situations, the dialer either disconnects the call (resulting in a "hang-up" call) or keeps the consumer connected with no one on the other end of the line in case a sales representative becomes available (resulting in "dead air"). The call abandonment prohibition, added to the TSR pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"),[2] is designed to remedy these abusive practices.[3]

Notwithstanding the prohibition on call abandonment, § 310.4(b)(4) of the TSR contains a safe harbor designed to preserve telemarketers' ability to use predictive dialers, subject to four conditions. The safe harbor is available if the telemarketer or seller: (1) Abandons no more than three percent of all calls answered by a person (as opposed to an answering machine); (2) allows the telephone to ring for fifteen seconds or four rings; (3) plays a prerecorded message stating the name and telephone number of the seller on whose behalf the call was placed whenever a sales representative is unavailable within two seconds of the

[1] 69 FR 67287 (Nov. 17, 2004).

[2] 15 U.S.C. 6101 *et seq.* This and other amendments to the original TSR resulting from a rule review mandated by the Telemarketing Act, 15 U.S.C. 6108, took effect on March 31, 2003. TSR Statement of Basis and Purpose ("TSR SBP"), 68 FR 4580 (Jan. 29, 2003).

[3] TSR SBP, 68 FR at 4641–45. The Telemarketing Act directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices, including "a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy." 15 U.S.C. 6102(a)(3)(A).

completed greeting of the person answering the call; and (4) maintains records documenting compliance.[4] Thus, to comply with this provision of the TSR, at least 97 percent of a telemarketer's calls that are answered by a person (rather than an answering machine) must be connected to a sales representative. A telemarketing campaign that consists solely of prerecorded messages, therefore, would violate § 310.4(b)(1)(iv) and would not meet the safe harbor requirements.

VMBC submitted a request for an advisory opinion requesting an additional safe harbor for prerecorded message telemarketing to consumers with whom the seller has an established business relationship, which the Commission treated as a petition to amend the TSR under § 1.25 of the FTC's Rules of Practice.[5] VMBC's submission sought permission to deliver prerecorded messages to consumers who have an established business relationship with the seller on whose behalf the telemarketing calls are made, asserting that such calls would not result in the twin harms of "hang ups" and "dead air" that the prohibition on abandoned calls in § 310.4(b)(1)(iv) was designed to remedy.

The amendment requested by DMA, in contrast, sought modification of the method for calculating the maximum three percent call abandonment rate prescribed in the existing safe harbor provision. DMA asked that the requirement in § 310.4(b)(4)(i) that sellers and telemarketers use "technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, *measured per day per calling campaign*" be revised so that the three percent standard instead could be "*measured over a 30-day period*" for all of a telemarketer's calling campaigns.

II. The VMBC Petition

The VMBC petition for an additional safe harbor was premised on a business model that, VMBC contended, would not result in the harms the call abandonment prohibition in § 310.4(b)(1)(iv) was designed to prevent. Under VMBC's proposed model, prerecorded messages would give the called party an opportunity to assert a company-specific Do Not Call request. The messages would allow the called party to do so either by pressing a button on the telephone keypad to speak to a sales representative at any time during the message, or alternatively by dialing a toll-free number that would connect to a sales representative. Finally, as indicated above, the prerecorded messages would be delivered exclusively to consumers who have an "established business relationship" [6] with the seller on whose behalf the calls are made.

A. VMBC's Rationale for a Safe Harbor

VMBC advanced three primary reasons for adding a new safe harbor to the TSR's call abandonment prohibition to permit calls delivering such prerecorded messages to consumers with whom the seller has an established business relationship. First, VMBC asserted that the harms that prompted inclusion of the call abandonment prohibition in the TSR would not be present in campaigns conducted according to its proposed business model. Specifically, VMBC argued that the use of prerecorded messages would make it unnecessary to subject a consumer to "dead air" while waiting for a sales representative, and would not result in a "hang-up" when no representative is available. Moreover, because the prerecorded messages would immediately identify the seller, the seller would not be engaging in telemarketing under the cloak of anonymity that often prompts consumer concern about "dead air" and "hang ups."

Second, VMBC contended that because the prerecorded messages would be delivered only to existing customers, sellers would have a strong incentive to preserve their customers' goodwill.[7] This incentive would serve, VMBC posited, as a sufficient check on the potential for abuse such that prerecorded calls to established customers would be unlikely to prompt substantial consumer objection.[8]

Finally, VMBC argued that a new safe harbor for prerecorded messages is necessary to conform the FTC's TSR to the rules and regulations issued by the Federal Communications Commission ("FCC") [9] pursuant to the Telephone Consumer Protection Act of 1991 ("TCPA").[10] VMBC pointed out that the FCC's rules—which largely parallel the Do Not Call and certain other of the TSR's provisions—since the early 1990s have permitted prerecorded message telemarketing to consumers with whom a seller has an established business relationship. In most other circumstances, however, the FCC's rules under the TCPA prohibit prerecorded message telemarketing, absent a consumer's prior express consent.[11]

B. The Safe Harbor Proposal and Specific Issues Raised for Public Comment

To assist interested parties in commenting on the VMBC petition, the NPRM included a proposed new § 310.4(b)(5) that would have amended the TSR to permit prerecorded telemarketing messages to established customers.[12] As drafted, the proposed safe harbor provision would have required sellers and telemarketers to: (1) Allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; (2) play a prerecorded message within two seconds of the called party's completed

[4] 16 CFR §§ 310.4(b)(4)(i)–(iv).

[5] 16 CFR 1.25.

[6] 16 CFR 310.2(n) ("'Established business relationship' means a relationship between a seller and a consumer based on: (1) The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.").

[7] VMBC noted that the FTC suggested that "the incentive to nurture established business relationships may provide an adequate restraint on the growth of recorded message telemarketing" in its *Report to Congress Pursuant to the Do Not Call Implementation Act* ("DNCIA Report"), p. 35.

[8] In support of this argument, VMBC cited one prerecorded campaign for a major retailer in which only .02 of 1 percent of 5.8 million customers asserted their Do Not Call rights. 69 FR at 67288 n. 8. *See also* n. 30, *infra*. The Commission noted in the NPRM, however, that any incentive to preserve consumer goodwill could be outweighed in practice by the fact that "it may be more economical for companies to contact consumers via prerecorded messages rather than using live telemarketers, so the volume of commercial calls that consumers receive may increase. "

[9] 47 CFR 64.1200. *See also* FCC Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92–90, Report and Order, 7 FCC Rcd 8752 (1992), available at *http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1071340001*, summarized in 57 FR 48333 (Oct. 23, 1992) ("1992 FCC Order"); amended by FCC Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02–278, Report and Order, 18 FCC Rcd 14014, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf*, summarized in 68 FR 44143 (July 25, 2003) ("2003 FCC Order").

[10] 47 U.S.C. 227 (1991).

[11] 47 CFR 64.1200(a)(2). The FCC's TCPA regulations make an exception for calls placed by a seller or telemarketer that has obtained the called party's prior express consent to receive telemarketing calls, or has an established business relationship with the called party. 47 CFR 64.1200(a)(2). The regulations also exclude calls for emergency purposes, calls not made for a commercial purpose that do not include a solicitation, and calls made by or on behalf of a tax-exempt nonprofit organization. 47 CFR 64.1200(a)(2)(i)–(v). In addition, the FCC's regulations absolutely prohibit all live and prerecorded telemarketing calls to a cellular telephone, regardless of any established business relationship or prior express consent a seller or telemarketer may have obtained. 47 CFR 64.1200(a)(1)(iii).

[12] 69 FR at 67289.

greeting; (3) give the called party an opportunity to assert an entity-specific Do Not Call request at the outset of the message, with only the disclosures required by §§ 310.4(d) or (e) preceding that opportunity; [13] and (4) ensure that the message complies with all other requirements of the TSR and other applicable State and Federal laws.[14]

1. The "Ring-Time" Standard

The NPRM explained that the first prerequisite for meeting the safe harbor requirements, the "ring time" standard requiring 15 seconds or four rings to elapse while awaiting an answer, is identical to the analogous element of the existing safe harbor in § 310.4(b)(4)(ii). That standard, modeled on what were then DMA's ethical guidelines for its members, was designed to give consumers, including the elderly or infirm who may struggle to get to a telephone, a reasonable opportunity to answer telemarketing calls before the connection is terminated.

2. The "Dead Air" Standard

The second prerequisite of the proposed safe harbor, requiring that the prerecorded message be played within two seconds of the called party's completed greeting, was intended to minimize "dead air." It was based on the analogous element of the existing safe harbor in § 310.4(b)(4)(iii), allowing no more than two seconds of dead air before the called party is connected to a sales representative. The Commission specifically requested public comment on whether the maximum amount of dead air should be less than two seconds in the new safe harbor for prerecorded messages in which there would be no need to connect a sales representative. The Commission also requested information on the relative costs and benefits of a standard that would set the maximum amount of dead air at a level lower than two seconds.

3. Prompt Opportunity for Company-Specific Do Not Call Requests

The purpose of the third prerequisite, mandating a prompt opportunity for consumers to assert a company-specific Do Not Call request, was to ensure the same Do Not Call rights for consumers who receive prerecorded message calls as are available to consumers receiving live telemarketing calls from a sales representative. Absent such parity, the Commission was concerned that, in view of the likely increase in the frequency of lower-cost prerecorded message calls (compared to the cost of live calls by sales representatives), the privacy protection provided by the National Do Not Call Registry might become illusory. The NPRM emphasized:

> Accordingly, the Commission believes that, if allowed, telemarketing calls that deliver prerecorded messages to consumers with whom a seller has an established business relationship must preserve the ability of those consumers to assert their Do Not Call rights *quickly, effectively, and efficiently*, so that consumers retain an effective right to decide whether to receive commercial calls, including prerecorded messages.[15]

The proposed safe harbor therefore required that the prerecorded message provide, "at the outset of the call" (*i.e.*, preceded only by the prompt oral disclosures required by the TSR), an opportunity for the called party to assert a seller-specific Do Not Call request by pressing a button on his or her telephone keypad to connect to a sales representative or an automated system. By stressing that "the Commission believes that the Do Not Call option should allow consumers to assert their Do Not Call rights *during* the prerecorded message," [16] the NPRM distinguished this element of the Commission's safe harbor proposal from FCC rules allowing prerecorded messages to provide a toll-free number consumers may call to make a Do Not Call request during or after the message.[17] The NPRM expressly declined to adopt the FCC approach, which requires "consumers to be prepared with pen and paper at the ready when they answer the phone, to take down the number and to place a separate call" to make a Do Not Call request, because that approach "encumbers consumers" assertions of company-specific Do Not Call rights." [18]

Noting that the VMBC petition "contemplates some prerecorded messages that would enable consumers to speak with a sales representative during the call by pressing a button on their telephone keypads," the NPRM specifically "incorporated this feature into the proposed amendment to the call abandonment safe harbor," [19] stating that it would "satisfy the proposed safe harbor." [20] This endorsement gave advance assurance to sellers and telemarketers that they could adopt this means of compliance during the pendency of this proceeding when the Commission announced it would forebear from enforcing the call abandonment provision if they complied with the proposed safe harbor.[21]

Although the NPRM did not similarly endorse prerecorded messages providing a toll-free number for consumers to call to be placed on a company-specific Do Not Call list, the Commission sought "information and data about the costs and benefits of requiring that the disclosure of how to make a Do Not Call request be made at the outset of the call," as well as about "alternative methods of preserving the consumer's ability to assert a Do Not Call request when receiving a prerecorded message telemarketing call." [22] In addition, the NPRM sought information and data about the technical feasibility and costs of implementing the interactive technology that allows consumers to make a company-specific Do Not Call request with the press of a keypad button, and the costs to industry of requiring this mechanism.

4. Effect on Other Laws

The fourth and final element of the draft proposal simply made it clear that the new safe harbor would not obviate or negate any other provision of the TSR or other Federal or State laws, in order to preserve consistency with the existing TSR call abandonment safe harbor. It placed sellers and telemarketers on notice that other applicable regulations may be stricter than the proposed safe harbor. The NPRM sought comment on whether or not this requirement was appropriate.

C. Public Comment

In general, the industry comments on the VMBC petition supported liberalizing the TSR to allow the use of prerecorded telemarketing messages, and consumers and consumer advocates opposed it.[23] Although both industry

[13] Section 310.4(d) requires the following prompt oral disclosures in outbound commercial telemarketing calls: (1) The identity of the seller; (2) that the purpose of the call is to sell goods or services; (3) the nature of the goods or services; and (4) that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered, and that any purchase or payment will not increase the chances of winning. Section 310.4(e) requires the following oral disclosures in outbound charitable solicitation calls: (1) The identity of the charitable organization on behalf of which the request is being made; and (2) that the purpose of the call is to solicit a charitable contribution.

[14] 69 FR at 67294.

[15] 69 FR at 67288–89 (emphasis added).

[16] 69 FR at 67289 (emphasis added).

[17] 47 CFR 64.1200(b)(2).

[18] 69 FR at 67289.

[19] *Id.*

[20] *Id.* at 67290.

[21] See the discussion in Section II.F, *infra*.

[22] 69 FR at 67289.

[23] All of the public comments, excluding 442 judged obscene or not germane, appear at *http://www.ftc.gov/os/comments/tsrcallabandon/index.htm*, where they are listed alphabetically under the name of the person who submitted the comment. The first citation of each comment

and consumer comments addressed the major issues raised by the NPRM, not all responded to each of the questions on which the Commission requested public comment.

Many of the comments, both from the telemarketing industry and consumers, exhibited a fundamental misconception of the TSR's scope. They presumed that, absent the proposed safe harbor, the TSR's call abandonment prohibition would prevent sellers from using prerecorded messages to provide important information to customers with whom they have an established business relationship, such as notifications of flight cancellations, reminders of medical appointments and overdue payments, and notices of dates and times for delivery of goods or service appointments. Such strictly informational calls, however, whether live or prerecorded, have never been covered by the TSR. The TSR applies only to "telemarketing," which is defined, in pertinent part, as "a plan, program or campaign which is conducted to induce the purchase of goods or services." [24] It does not apply to informational calls, unless the calls combine the informational message with a sales invitation or promotional pitch.

1. Industry Comments

Comments from 21 telemarketers and business trade associations uniformly favored allowing sellers to use prerecorded telemarketing messages to reach their customers, arguing that this is a cost-effective method for communicating without the need for sales representatives.[25] Several noted not only that prerecorded messages avoid the harms associated with abandoned calls (*i.e.*, "dead air" and "hang ups"), but also ensure better quality service to customers than telemarketers because there is no risk that the intended message will vary from call to call.[26]

Several industry comments posited that consumers are interested in receiving prerecorded messages.[27] Although some of the examples cited to support this contention were prerecorded messages governed by the TSR (such as letting customers know of special promotional events or upcoming sales),[28] many of the examples, if not most, were informational messages that are not covered by the TSR at all.[29] For example, SBC cited a survey of 1217 of its DSL Internet access customers on the use of prerecorded informational messages to remind them of their service installation dates, in which 55.1 percent said they would like to receive such messages in the future.[30] As previously noted, such informational messages are neither governed nor prohibited by the TSR, because they are not "telemarketing" as defined by the Telemarketing Act [31] or the Rule.[32]

Adopting VMBC's view that sellers would self-regulate and not abuse the goodwill of their customers, most of the industry comments that addressed the issue doubted that the volume of prerecorded telemarketing messages that consumers receive would increase if the safe harbor proposal were adopted.[33] VMBC's comment further predicted that the likely result would not be an increase in calls, but that many "non-sale" calls would convert from live calls from sales representatives to cost-effective recorded messages.[34] Two industry comments disagreed. One acknowledged that, if allowed, prerecorded telemarketing messages would increase in number given their low cost.[35] Another observed that the proposed safe harbor would free it and its telemarketers from using recorded messages solely for informational purposes, "and put prerecorded messages to additional valuable uses." [36]

Only two industry comments addressed the question posed in the NPRM of whether the proposed safe harbor would complicate Commission enforcement actions against sellers or telemarketers who falsely claim to have an established business relationship with the consumers they call. Both opined that potential enforcement problems should not be an issue because the burden of proving the existence of an established business relationship falls on the seller or telemarketer, not the Commission.[37]

The industry comments uniformly urged the FTC to adjust the TSR to track the FCC's regulations that permit the use of prerecorded messages for telemarketing to established customers.[38] Some went so far as to argue that the Commission lacks jurisdiction to regulate prerecorded telemarketing messages because Congress has given exclusive authority to the FCC to do so.[39] One conceded

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includes the name of the commenter, the name in parentheses of the person or entity submitting the comment if it is different from the name of the commenter, and the comment number (*e.g.*, ABC Corp. (Smith, J.), No. OL–123456). Comment numbers without a prefix were delivered to the Commission in paper form; those with the prefix "OL" were submitted online at the FTC's Web site; and those with the prefix "EREG" were submitted to *http://www.regulations.gov*. Subsequent citations to a comment omit the comment number.

[24] 16 CFR 310.2(cc). For the same reason, it is unnecessary to grant the request made in a comment on behalf of credit and collection professionals that the Commission forbear from enforcing alleged violations of the Fair Debt Collection Practices Act based on the FCC's requirement that debt collectors identify themselves by their State-registered name in prerecorded telephone messages. ACA International, No. OL–113912. As the Commission has previously stated, pure debt collection calls are not covered by the TSR because they are not "telemarketing" calls. TSR SBP, 68 FR at 4664 n.1020 (noting, however, that "if the debt collection call also included an upsell, the upsell portion of the call would be subject to the Rules as long as it also met the criteria for 'telemarketing' and was not otherwise exempt from the Rule. All debt collection calls must comply with the FDCPA.").

[25] Only 21 of the 23 industry comments addressed this issue. E.g., VMBC (Wiley Rein & Fielding), No. OL–113915 at 8; Joint Comment of the United States Chamber of Commerce, The Coalition for Healthcare Communication, The Consumer Bankers Association, The Magazine Publishers of America, The Mortgage Bankers Association, The National Newspaper Association, The Newspaper Association of America, and The Independent Insurance Agents and Brokers ("U.S. Chamber") (Wiley Rein & Fielding), No. OL–113911 at 5; The Heritage Company ("Heritage"), No. OL–112918 at 1; West Corporation ("West"), No. OL–112911 at 2.

[26] VMBC at 7, 11; U.S. Chamber at 5; West at 1; Direct Marketing Association and American Teleservices Association ("DMA"), No. OL–113918 at 9; Visa U.S.A., Inc. ("Visa"), No. 000023 at 2; Call Command, LLC ("Call Command") No. 000025 at 1–2; Verizon Telephone Companies ("Verizon"), No. OL–113893 at 4.

[27] VMBC at 6, 10; U.S. Chamber at 4; Call Command at 2; SBC Communications, Inc. ("SBC"), No. 000026 at 2, 4.; National Retail Federation ("NRF"), No. 000027 at 3.

[28] VMBC at 2; SBC at 2; NRF at 3.

[29] E.g., Call Command at 2 (asking that the Commission acknowledge that prerecorded informational messages, such as notification about a change in flight schedules or about a product recall, are permissible, and suggesting that all such "transactional" messages, as that term is used in the CAN–SPAM Act, 15 U.S.C. 7702(17), be exempt from the TSR); Broadcast Solutions, No. OL–113933 at 1; SBC at 3; NRF at 3; VMBC at 2; Verizon at 5.

[30] SBC at 3 (acknowledging that the survey reports were not "directly apposite, as they relate to service activation and related transactional messages"). Similarly, VMBC cited arguably favorable reaction from 5.8 million consumers to prerecorded campaigns as measured by an increase of from 20 to 40 percent in response rates to "promotions" and "showing up for appointments" with Do Not Call requests "averaging 2/100ths of one percent." VMBC at 6. Unfortunately, this merging of data for prerecorded messages that are not governed by the TSR with those that are, without specifying the opt-out method provided to consumers, provides little help in evaluating the potential impact of the proposed safe harbor.

[31] 15 U.S.C. 6106(4).

[32] 16 CFR 310.2(cc).

[33] E.g., VMBC at 10; U.S. Chamber at 5; DMA at 9; SBC at 2; NRF at 4.

[34] VMBC at 10. However, since such "non-sale" calls are not governed by the TSR, the Rule does not prevent the use of prerecorded messages for this purpose.

[35] West at 2.

[36] SBC at 3 n.7.

[37] Infocision Management Corp. ("Infocision"), No. OL–113920 at 4; West at 3.

[38] VMBC at 12; Infocision at 1; SoundBite Communications, Inc. ("Soundbite"), No. OL–112919 at 1–2.

[39] Soundbite at 1–2; Infocision at 1; but see, United States Senate, No. OL–113862 (Senators Bill

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that the Commission may have authority to regulate deceptive, unfair, and abusive telemarketing practices, but cited a need for clarification of the TSR's applicability to prerecorded messages.[40]

The subject that elicited the greatest industry comment was the proposed safe harbor requirement that consumers be presented, at the outset of a prerecorded message, with an interactive mechanism to exercise their company-specific Do Not Call rights. Almost all opposed this aspect of the proposal,[41] with two objecting that it unconstitutionally mandated compelled or "forced speech."[42] Several argued that requiring a disclosure at the outset would result in a large number of Do Not Call requests, and might confuse consumers who would otherwise wish to hear the message.[43] Others contended that the method authorized by the FCC of providing a number during or at the end of the message that consumers can call with a Do Not Call request works well, and should be adopted by the FTC.[44] Many objected that interactive technology, either to connect to a representative or to make an automated Do Not Call request, is costly, burdensome, and not widely available,[45] notwithstanding the arguments by two industry members that the technology is available on "a very cost effective basis."[46] One comment doubted that it "would necessarily be the case that the interactive feature would connect the consumer to a live sales representative any faster than if the customer were simply to dial an 800-number."[47] Several comments recommended that the Commission leave the timing and method of providing a Do Not Call option up to the industry, as the FCC has done, so that sellers will have the flexibility to choose the method most suitable to their operations based on preferences and costs.[48]

2. Consumer Comments

Nearly all the consumers and consumer advocacy groups who commented opposed the proposal to permit telemarketing calls that are prerecorded, regardless of whether the party called has an established business relationship with the seller.[49] Their comments show that consumers overwhelmingly find prerecorded telemarketing messages more intrusive and invasive of the privacy they enjoy in their homes than live telemarketing calls,[50] primarily because they are powerless to make themselves heard.[51] As one consumer put it, "[t]he telephone is for conversing with another human being, not for invading my home with inexpensive advertising."[52]

Like many industry comments, most of the consumer comments that seemed to support the proposal to allow prerecorded messages in telemarketing calls to established customers exhibited a basic misunderstanding of the TSR's applicability. Specifically, the majority of these relatively few supportive consumer comments indicated that they did not want the Commission to prohibit prerecorded informational messages such as reminder messages—although such messages have never been covered, much less barred, by the TSR.[53] These consumers expressed appreciation for prerecorded informational messages about delivery dates for previously purchased goods or services, medical prescription order notifications, flight cancellation alerts, and overdue bill and appointment reminders.[54] Yet some of the same consumers made it clear they opposed receiving prerecorded telemarketing sales pitches.[55] Thus, there is only the barest consumer support in the record for the proposed safe harbor for prerecorded telemarketing sales calls to established customers.

The widespread opposition expressed in this record to the infringement on personal privacy through prerecorded telemarketing calls to home telephones stands in sharp contrast to the consumer support in the record of the TSR amendment proceeding for including an established business relationship exemption for telemarketing using sales

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Nelson and Dianne Feinstein commented that "there is no reason why the FTC should promulgate an anti-consumer rule to meet the FCC's lower standard for prerecorded messages.").

[40] Verizon at 5.

[41] DMA at 11; Infocision at 4; Heritage at 1–2; SBC at 4; West at 3; Visa at 2; Verizon at 6; Soundbite at 2; Convergys Corp. ("Convergys"), No. OL–113952 at 5–6; National Association of Realtors ("NAR"), No. EREG–000005 at 1–2; National Retail Federation ("NRF"), No. 000027 at 5; The Broadcast Team, No. OL–112822 at 2.

[42] Heritage at 2; Infocision at 3.

[43] VMBC at 10; U.S. Chamber at 5; DMA at 9; SBC at 2; NRF at 4; Heritage at 1–2; Soundbite at 2; SBC at 4; West at 3.

[44] Call Command at 1; Convergys at 5; DMA at 11; NAR at 1–2; Visa at 2; Verizon at 6–7; NRF at 4–5. Verizon also argued that requiring that Do Not Call information be provided "at the outset" of a prerecorded message would conflict with current FCC regulations. Verizon at 6.

[45] DMA at 11–12 (estimating that reprogramming calling stations would cost "$25,000 per location"); SBC at 4 (citing the "significant investment of time and capital to synchronize telephonic dialing capabilities with interactive voice platforms and databases," the significant cost of requiring the availability of sales agents, and asserting that the "number of calls able to be made in a single day would decrease by more than 99%"); Convergys at 5 (arguing that connection to an agent would be cost prohibitive because of the increase in telecommunications costs to maintain "bridges" to customer service personnel); Visa at 2 ("[T]he technology to permit registration [on company-specific Do Not Call lists] during the telemarketing call presently is not widely implemented and * * * would be costly and complicated").

[46] Soundbite at 2; VMBC at 10.

[47] SBC at 14 n.13.

[48] VMBC at 13–14; U.S. Chamber at 6; West at 3; Visa at 2; cf. NRF at 4 (suggesting a more flexible disclosure timing such as "reasonably promptly").

[49] E.g., Electronic Privacy Information Center ("EPIC"), No. OL–113823 at 2; Privacy Rights Clearinghouse ("PRC"), No. OL–113986 at 2–4; National Consumers League ("NCL"), No. OL–112905 at 5. Well over 13,000 of the 13,550 consumer comments in the record clearly opposed allowing prerecorded telemarketing messages, with no more than 77 of the comments indicating arguable support for the proposed amendment.

[50] Some 2,100 of the consumer comments opposing prerecorded telemarketing calls specifically objected that they constitute an invasion of privacy.

[51] E.g., Myers, M., No. OL–100768 ("Pre-recorded messages are even more annoying than calls from live people. You can't interrupt, you can't ask questions and you can't respond."); Allen, No. OL–103079 ("I cannot ask a recording to clarify who they are or what our existing relationship is."); Stahl, K., No. OL–101878 ("The very worst form of telemarketing is the one made by a machine. Pre-recorded messages are just as invasive and unwanted, and far more frustrating."); Levy, No. OL–102365 ("No business should be able to call me unless I have a pre-existing relationship (one that >I< recognize), but even a company I do business with should hire someone to actually speak to me.") (punctuation in original); Powell, D., No. OL–113775 ("Recorded messages like this are more than an annoyance, they are a way for business to avoid talking to their customers, and instead just talk at them.").

[52] Watson, B., No. OL–108960; cf. Nungesser, R., No. OL–112535 (uninvited prerecorded calls are "no different than a door to door salesman breaking you[r] window, and entering your home to sell you his product only * * * it will be a robot, not a person.").

[53] Of the 77 positive consumer comments, more than half—47—sought only to preserve prerecorded informational messages that are not prohibited by the TSR. These 47 consumers opposed any limitation on prerecorded "reminder" messages, with some 36 of them seeking to avoid any need to sign a consent form to receive such messages, apparently in the mistaken belief that this would be necessary if the proposed amendment were not adopted. E.g., Haas, No. OL–113929; Tran, No. OL–113929; Lopez, No. OL–113975; Schroeter, No. OL–113882; DeSantis, No. OL–113892. One consumer group correctly noted that such strictly informational messages "would not fall under the definition of 'telemarketing'" in the TSR. NCL at 3.

[54] E.g., Matthews, D., No. OL–100004; Forrette, No. OL–113959; Bartholow, D., No. OL–113662; Auerbach, No. OL–101665; Oberly, No. OL–105967.

[55] E.g., Matthews, D., No. OL–100004 ("Some pre-recorded computer generated calls are convenient and necessary" but "[t]elemarketing computer generated 'cold calls" are definitely a problem."). Forrette, No. OL–113959 ("I can think of several cases where I find this very useful, such as notification from my airline when there's a schedule change to my flight. As long as the prohibition on the use of pre-recorded messages for 'cold calling' remains in place, I think it's okay."); Bartholow, D. No. OL–113622 ("Bill reminders are not the same as telemarketing sales calls."); Consumer Assistance Network, No. OL–113928 ("The consumer would rather receive a [reminder] message rather than a telemark[et]ed call.").

representatives. In that proceeding, the Commission provided such an exemption from the Do Not Call provisions after 40 percent of the consumers who commented supported the exemption.[56] Here, only 15 consumer comments—a scant tenth of one percent of the more than 13,000 consumer comments that addressed the proposed amendment—expressed unambiguous support for the proposed safe harbor for prerecorded message telemarketing to established customers.[57]

Consumers also expressed concern about the potential costs, including the risks to health and safety, if the proposed safe harbor allowing prerecorded telemarketing messages to established customers were adopted. For example, consumers who subscribe to a telephone company or other voice mail services protested having to pay for storage of messages they do not want, which can exceed their allotted storage capacity and prevent them from receiving the messages they need, as did owners of answering machines.[58] Consumers with home-based businesses objected to the costs incurred when their home telephone lines are tied up by telemarketing calls,[59] and even small businesses and government agencies that are not protected by the TSR lodged the same complaint.[60] Several consumers cited the danger of the loss of use of their telephone lines, which can be tied up for some period of time even after the recipient hangs up on a prerecorded message.[61] A few consumers cited instances when prerecorded messages prevented them from making emergency calls,[62] and a community shelter that forwards its calls to allow staff counselors to receive them on their home telephones reported that "[w]e are dealing with life and death situations from suicide to substance abuse to domestic violence" and clients "are unable to get to a crisis counselor due to the high volume of telemarketers calling our [home] phone number."[63]

Consumers emphasized the difficulties they experience with prerecorded messages in exercising their company-specific Do Not Call rights. Many objected to the fact that they could not tell a prerecorded message to put them on the seller's Do Not Call list, as they could with a sales representative.[64] Some consumers reported that the mechanism typically provided for exercising their Do Not Call rights is impractical,[65] both because they have to wait until the end of what may be a lengthy message to get a number to call to speak to an agent,[66] and because the Do Not Call option provided at the end of the message simply does not work.[67]

More generally, the comments attest that consumers found the company-specific opt-out regime required to stop unwanted prerecorded messages prior to

[56] TSR SBP, 68 FR at 4593 n.141.

[57] Only 15 of the 77 consumer comments that arguably supported prerecorded telemarketing calls did so without reservation or apparent misunderstanding. E.g., Hamilton, No. OL–113099 ("I would be in support of the change. * * * I would rather hang up on an automated machine than a live person."); Curran, D., No. OL–105145; Childress, No. OL–102612; Young, E., No. OL–112546. Another 13 approved of prerecorded sales calls from businesses they know and regularly patronize, but not necessarily from any business from which they have made a purchase. E.g., Leader, No. OL–110416 ("I am not in favor of this amendment. * * * [T]he only calls that should be allowed are to companies who have an ongoing existing and real business relationship with the customer."); Dusenbury, No. OL–113951 (supporting prerecorded reminder messages generally, including "sale reminders from my favorite stores."); Bartholow, D., No. OL–113622. Two consumers backed prerecorded messages in the mistaken belief that such messages would be "permission based" opt-in messages. Taylor, J., No. OL–105274; Taylor, R., No. OL–105171. The remaining 47 supported prerecorded "reminder" messages, as previously noted. See note 53, *supra*.

[58] E.g., Allison, No. OL–108414 ("In the recent election one citizen had her answering machine [so] filled with phone messages from a candidate that her child could not get word to her of an emergency at the child's school."); O'Connor D., OL–111858; Rose, C., OL–111837; Micret, OL–111402; Rickey, OL–104029; see also PRC at 6–7; NCL at 3. Neither the TSR nor the proposed new safe harbor, however, prohibits the use of prerecorded messages when an answering machine picks up a call. See the discussion in Section II.E, *infra*.

[59] E.g., Brown, R., No. OL–104366; Amsberry, No. OL–105113; Lasting Fitness, No. OL–110413; Miller, No. OL–103424; Grover, No. OL–109774; Pearlman, S., No. OL–112275.

[60] E.g., Northeast Harbor Inn, Inc., No. OL–113439; Bart's Pneumatics Corp., No. OL–107508; Bus. Innovations, No. OL–110414; cf. Idaho Small Bus. Dev. Ctr., No. OL–113259; County of Berks—Prison, No. OL–105593.

[61] E.g., Graham, No. OL–104100 ("If you needed to call for a fire truck or an ambulance or poison control and some recorded message was tying up your phone, would you think it was OK?"); Vernen, No. OL–110383 (prerecorded calls "most dangerously—frequently fail to release the line promptly when hung up on. This presents an immediate risk to the health and safety of the call recipient since the telephone line is unavailable in an emergency."); see also, e.g., Adkins, No. OL–104921; Albright, D., No. OL–105813; Alquist, No. OL–113229; Schmaljohn, No. OL–110028; Granzo, No. OL–104469; Pickett, A., OL–104461; Simnacher, No. OL–108720; Miller, C., No. OL–105006. As the legislative history of the TCPA notes, S. Rep. No. 102–178, at 10 (1991), some telephone networks are not capable of notifying callers that a consumer has hung up, thereby excusing telemarketers from complying with an FCC requirement that they release the line "within 5 seconds of the time [such] notification is transmitted." 47 CFR 68.318(c). It appears from the comments that many networks still lack this capability. Thus, depending on their local network, consumers may have to wait until the end of what may be a lengthy prerecorded message before their telephone line is released.

[62] Friedman, No. OL–110265 (a disabled consumer unable to make an emergency call because the recorded message would not disconnect); Gardiner, W., No. OL–100542 (an elderly consumer who complained that the receipt of prerecorded messages twice prevented him from contacting a doctor). See also, NCL at 3; PRC at 11 (citing a comment it received from a self-identified "former legitimate telemarketing salesman" objecting to allowing prerecorded messages because "[t]here are one or more deaths on record Nationally that were precipitated by a prerecorded message that would not cede the line it was on, even though the receiving party had hung up! ").

[63] Chico Community Shelter Partnership, No. OL–109650; cf. Udehn, No. OL–114005 ("Callers are persistent and do not like to release phone lines until they make a sale, even to allow emergency patient calls. I need a line uncluttered by telephone SPAM to continue emergency room coverage.").

[64] E.g., Sahagian, No. OL–113021 (a self-described "unemployed telemarketing manager, laid off as a direct result of the national do not call list" who finds prerecorded messages "the most intrusive" because "I can't ask the message to get to the point or never call again."); Bedell, No. OL–105951 ("A machine can't hear me say 'put me on your do-not-call list!' "); Schares, No. OL–110388 ("At least with a live person, you can have the illusion of requesting removal from the list, with a machine, you are just out of luck."); Irving, No. OL103862; see also, e.g., Sawyer, No. OL–108895; Goltz, OL–107085; Hancock, J., No. OL–112529; Blumberg, No. OL–104484; O'Daire, No. OL–113753; Salgado, No. OL–111816; Von Kennen, No. OL–113646; Ianson, No. OL–105278; Valum, No. OL–102442; Van Baren, No. OL–101942; Zimmerman, J., No. OL–113999.

[65] E.g., Hohm, No. OL–104448 ("Allowing automated calls will let telemarketers flood consumers with sales calls * * * with no practical means for the consumer to challenge their propriety or to refuse further calls."); Sartin, No. OL–104554 ("If [prerecorded calls] are to be allowed, it should only be through opt-in, not an inherently awkward and unreliable opt-out."); Von Kennen, No. OL–113646 ("I can only imagine the telephone ping-pong game between menus, voice-mail, call transfers, and the inevitable disconnection that I'll have to play before I can hope to talk to someone who will listen [to a Do Not Call request].").

[66] E.g., Sahagian, No. OL–113021 (an "unemployed telemarketing manager" who states that "[o]ften one must wait until the end of the message for contact information, write down a phone number, call back, turn down a live sales offer, ask to speak with a manager, and then finally ask to be deleted from future calling campaigns."); Nobles, No. OL–105403, ("The requirement[s] that they identify themselves and allow me to ask them to remove me from their calling list are meaningless, since that information is always supplied at the very end of the call."); Stahl, K., No. OL–101878; Schneider, P., No. OL–101484. The call-back requirement that consumers describe, if permitted by FCC rules, does not comply with the safe harbor proposal in the NPRM because it fails to give consumers an opportunity to exercise their Do Not Call Rights during the call.

[67] E.g., Blumberg, No. OL–104484 ("There is always an option to wait until the end of the message and press a number to talk with a person but only in rare instances does this work."); Vinegra, No. OL–104055 ("[I]n my experience, automated phone spam is the MOST likely to not have a valid way to get off the list. Oh, sure, it may give you an 800 number to call, but that's likely to reach some convoluted voicemail system that never gets you anywhere."); Fiol, No. OL–112458 ("I do not believe that offering consumers the option of hanging up and calling an 800 number is an effective one. It only worsens the interruption and imposition on the consumer's time, and * * * frustrate[s] the consumer if the 800 number is busy or even inoperative.").

the advent of the Registry extremely burdensome and frequently ineffective.[68] Apparently assuming that a company-specific opt-out might not take the form of an interactive method at the outset of the call (as proposed by the Commission), some consumers complained that the burden would be placed on them to listen until the end of unwanted messages to obtain an opt-out telephone number, to copy the opt-out number, and to wait to call that number during normal business hours to ask not to be called again—a process they would have to repeat for each company that calls.[69]

Some consumers and consumer groups questioned the adequacy of the proposed interactive mechanism that would permit consumers to exercise their Do Not Call rights by pressing a button on the telephone keypad. At least one consumer noted that this approach would be ineffective for her, and presumably many thousands of other consumers who still have rotary dial telephones without keypads.[70] A consumer group and at least one consumer questioned whether the proposed interactive mechanism would be effective in the absence of a requirement that a representative be promptly available.[71] Another consumer group doubted that consumers would really benefit from the proposed interactive mechanism.[72]

A number of consumers also challenged a presumption implicit in the proposed safe harbor that would have permitted prerecorded telemarketing calls to established customers. Notwithstanding the FCC's rationale for allowing sellers to use prerecorded messages in calls to established customers,[73] many consumers contended that neither a prior inquiry nor purchase implied their consent to receipt of future prerecorded solicitations from a seller,[74] contrary to prior consumer support for live telemarketing calls.[75] Many of the consumer comments argued that, given the intrusive and impersonal nature of prerecorded messages, prerecorded telemarketing calls should not be permitted at all without the consumer's prior consent.[76] In addition, many objected to what they regard as the overbreadth of the TSR's definition of an "established business relationship," [77] which some regarded as threatening to make a "mockery" of the Registry [78]—especially if the use of prerecorded messages is permitted.[79] These consumers foresee that allowing prerecorded messages will likely increase the number of "established business relationship" telemarketing campaigns, with the result that consumers will have to assert company-specific Do Not Call requests repeatedly for different sellers from which they made a one-time purchase.[80] Moreover, some consumers reported that they receive both live and prerecorded telemarketing calls from businesses with which they have no "established business relationship." [81]

Many consumers also commented that since they listed their telephone numbers on the National Do Not Call Registry, they have come to rely on it to shield them from unwanted telemarketing calls, including prerecorded messages.[82] A large number fear the proposed safe harbor will create a "loophole" that will dilute the effectiveness of the Registry in preventing unwelcome intrusions on

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[68] E.g., Gollinger, No. OL–103929 ("This puts an undue burden upon the consumer to attempt to contact the company to have their name deleted from the call list."); Wahlig, No. OL–104503 at 1 (citing the "unjustifiable burden on citizens who wish to assert their DNC rights"); Tomas, No. OL–101671 ("Instead, the burden is placed on the victim's shoulders to contact the telemarketer to have himself removed from the call list."); Ayers, T., No. OL–113131; Bashor, No. OL–113062; Fiol, No. OL–112458; LaMountain, No. OL–101888; Boyd, M., No. OL–113844; Hall, No. OL–104082; Grace, No. OL–113784; Piro, No. OL–112925.

[69] E.g., Hancock, J., No. 112529; Sahagian, No. OL–113021; Kleger, No. OL–103115.

[70] Sachau, No. EREG–000002; see also Argyropoulos, No. OL–102968 at 2 ("[N]one of the proposed options allow a person answering on a non-touch-tone phone to efficiently make a Do Not Call request."). While other mechanisms undoubtedly exist to provide equivalent functionality for rotary dial telephone users, no industry comment addressed this problem in response to the NPRM's request for information about "alternative mechanisms."

[71] NCL at 5 ("The FTC proposal seems to assume that when the consumer presses the number to speak to a live company representative, one will be readily available. It is unclear what happens if that is not the case. Will the consumer get dead air? Be put on hold with recorded music? Be hung up on?"); Argyropoulos, No. OL–102968 at 2.

[72] PRC at 7 (arguing that most prerecorded telemarketing messages are left on answering machines or voice mail services, depriving consumers of the benefits of such an option, and ultimately clogging their message storage with unwanted telemarketing messages). However, nothing in the TSR's call abandonment prohibition bars the use of equipment that channels a call to a sales representative if a consumer answers, but to a recorded message if an answering machine picks up. See TSR SBP, 68 FR at 4645; see also the discussion in Section II.E, infra.

[73] 1992 FCC Order, 7 FCC Rcd 8752, ¶ 34 (concluding that a "solicitation can be deemed invited or permitted by a subscriber in light of the business relationship.").

[74] E.g., Sancibrian, No. OL–106078; Salem, No. OL–107247; Sartin, No. OL–104554; Laucik, No. OL–104859; Wortman, No. OL–103376; Corey, No. OL–105981; Innes, No. OL–105931; Brown, R., No. OL–107136; Troup, No. OL–103143; Goland, No. OL–100107.

[75] See note 56, *supra*, and accompanying text. Many of the consumer comments opposing expansion of the "established business relationship" exemption did not distinguish between prerecorded calls and live calls from a sales representative. Consequently, it is impossible to determine whether these comments would support an established business relationship exemption for live telemarketing calls, or whether they reflect a change in consumer attitudes toward the exemption.

[76] EPIC at 2, 14; PRC at 4, 9; NCL at 4; see also, e.g., Barry, A., No. OL–104109; Williams, K., No. OL–101321; Norfh, W., No. OL–103090; Schnautz, No. OL–104508; Tipping, No. OL–109310; Twilling, No. OL–108395; Viggiano, No. OL–108516.

[77] E.g., Nuglat, No. OL–109584 ("[T]hese companies will be calling a purchase of a stick of gum a year ago the basis of an established business relationship."); Touretzky, No. OL–100891 ("I work nights and sleep in the daytime. I do not want to be dragged out of bed by every low-life outfit that once sold me a box of paperclips."); Holt, C., No. OL–102518 ("Time Warner owns some 80% of the media markets, does that mean if I buy one copy of Time magazine that I should have to receive phone calls from every other media outlet Time owns? That's the way it functions now."); see also, e.g., Holt, C., No. OL–102518; Schendel, K., No. OL–101419; Veech, No. OL–110162; Ehlinger, No. OL–105751; Eide, No. OL–102754; Erskine, D., No. OL–109355; Volek, No. OL–100697; Inman, J., No. OL–102319; Verner, No. OL–104134; Islam-Zwart, No. OL–100028; Sampson, No. OL–106004; Salisbury, No. OL–104292.

[78] Sanderson, No. OL–447. See also Sager, No. OL–104269; Yarrow, No. OL–102563.

[79] EPIC at 14; PRC at 9; NCL at 3.

[80] E.g., Hancock, J., No. OL–112529 ("Since a 'business relationship' is readily established by any inquiry or purchase, the universe of companies that can claim a basis to make junk phone calls is huge."); Talmo, No. OL–110438 ("A few years ago, most of my purchases were made within my community.* * * The digital world has opened up very far-reaching so-called relationships. * * * I now make many one-time [Internet] purchases from companies I may never contact again. I fear that these simple one time purchases will constitute a so-called business relationship."); Argyropoulos, No. OL–102968 at 1 ("Companies are offering free or below-cost inducements to establish business relationships for the primary purpose of acquiring the ability to telemarket to consumers in the Do Not Call registry.").

[81] E.g., Fryman, No. OL–101503 ("The established business relationship clause of the existing system has been stretched and twisted beyond all recognition, such that companies that we have had no 'business relationship' with in over 5 years are still calling."); Anderson, J., No. OL–102561 ("I get 3–5 calls a day, with recorded messages. And NO, they are NOT people I've done business with!"); Holt, C., No. OL–102518, ("I constantly receive solicitations from companies who claim I have a relationship with them, and I've never heard of them before. STILL get calls, both human and PRE-Recorded.* * *[A]s I was writing this, I was just interrupted by a TELEMARKETING CALL!!!!!! * * *[I]t was not a company we had ever done business with and they would not tell me how they got this number.").

[82] E.g., Thompson, A., No. OL–104385 ("I recently moved, and my new phone number was not on the Do Not Call list; I received more 'junk' calls than I received normal phone calls. Adding my new number to the list made having a phone bearable again."); Musgrave, No. OL–106135; Sampson, No. OL–106004; Anholt, No. OL–104141; Dougherty, J., No. OL–106035; Gordon, M., No. OL–109877; Matson, No. OL–111933; Gunnells, No. OL–108503; McCarthy, L., No. OL–101367; Sayer, No. OL–100407.

their privacy at home.[83] Consumers and their advocates expressed concern that, if the proposed new safe harbor were adopted, marketplace economics could soon produce a flood of prerecorded telemarketing messages that would engulf the privacy protection provided by the Registry. They cited, in particular, such recent digital technologies as Voice Over Internet Protocol ("VoIP") as likely to lower the costs of prerecorded telemarketing messages to the point that they would be used extensively, if permitted.[84] Thus, several comments argued that allowing the use of prerecorded messages in telemarketing to established customers would in effect create the telephonic equivalent of "spam," overwhelming consumers with unwanted messages that cost the caller little or nothing to send.[85]

D. Analysis of the Comments, Discussion and Conclusion

Two themes strikingly emerge from the record. First, there is virtually no consumer support for allowing the use of prerecorded messages; and second, neither industry nor consumers support the proposal's effort to ensure that consumers would be able to assert an entity-specific Do Not Call request in an "established business relationship" call delivering a prerecorded message as easily and as quickly as in a similar call using sales representatives. Thus, the Commission's analysis begins from the premise that a new safe harbor that treats prerecorded telemarketing calls to established customers differently from other prerecorded calls might be appropriate if: (1) The consumer aversion to prerecorded calls (which led to enactment of the TCPA ban on such calls) does not apply when such calls are made to established customers; (2) any harm to consumer privacy is outweighed by the value of prerecorded calls to established customers; or (3) there is something unique about the relationship between sellers and their established customers that gives sellers a sufficient incentive to self-regulate so that they would avoid prerecorded telemarketing campaigns that their customers would consider abusive. Based on careful consideration of the comments, the Commission concludes that the record does not support any of these possible rationales for treating prerecorded telemarketing calls to established customers differently from other prerecorded calls.

First, if consumers had little or no aversion to prerecorded calls from sellers with whom they have an established business relationship, the fact that such calls avoid the twin harms of "dead air" and "hang ups" associated with abandoned calls would weigh heavily in favor of the adoption of a new safe harbor. The record here provides compelling evidence, however, that consumer aversion to prerecorded message telemarketing—regardless of whether an established business relationship exists—has not diminished since enactment of the TCPA, which, in no small measure, was prompted by consumer outrage about the use of prerecorded messages. The comments in this record demonstrate that consumers continue to view such calls as an abusive invasion of their privacy, and an even greater invasion of their privacy than live telemarketing calls because they are powerless to interact with a recording. Indeed, almost all of the very few consumers who commented in favor of prerecorded messages confined their comments strictly to informational calls, in some cases qualifying their support with negative comments about prerecorded sales calls.[86]

In addition, some consumers are troubled by the potential hazards that prerecorded messages may pose for their health and safety when home telephone lines cannot be released in emergencies. As this record attests, in at least a few instances, prerecorded messages of indeterminate length have prevented consumers from making emergency calls—a concern which was an important factor leading to passage of the TCPA.[87] While the record does not suggest that obstruction of emergency calls by prerecorded messages is a common occurrence, the seriousness of the potential consequences when it does occur creates legitimate cause for concern.

Likewise, the possibility that any harm to consumer privacy might be outweighed by the value of prerecorded calls to established customers is convincingly refuted by the consumer comments. There is support in the record for prerecorded informational messages—i.e., messages without any sales pitch—which are not prohibited by the TSR; yet there is virtually none for prerecorded telemarketing messages. Accordingly, this second potential rationale for adoption of a new safe harbor is not supported by the record—a fact that assumes particular importance in view of Supreme Court precedent that has long recognized the significant governmental interest in protecting residential privacy.[88]

The third possible rationale for a new safe harbor—that sellers will self-regulate the number of prerecorded messages they send in order to preserve the goodwill of established customers[89]—is similarly unpersuasive. Although it may be that well-established businesses with brand or name recognition will engage in such restraint, the same is not necessarily true for new entrants and small businesses in highly competitive markets. The proposed safe harbor, if approved, would expose consumers, including those who have entered their telephone numbers on the Registry, to such prerecorded messages, potentially from every seller from whom they have made a single purchase in the past 18 months. In addition, because the TSR's definition of an "established business relationship" includes consumers who have not made a prior purchase, but simply an inquiry, sellers would have

[83] Over 5,900 consumer comments asserted that there is no need to create a "loophole" or to adopt the amendment. E.g., Brown, R., No. OL–101294; Hill, A., No. 000037; Moore, M., No. OL–101468; Fryman, No. OL–101503; Vrignaud, No. OL–101542; Jester, No. OL–101685; Selmi, No. OL–102168; Miller, No. OL–103424; Vogel, No. OL–105708 at 1.

[84] Sacerdote, No. OL–112192 ("The cost of placing such automatic call[s] is essentially zero, and the desire to place such calls will therefore be nearly infinite.") (emphasis added); EPIC at 5–6 (citing a 1999 news report that VMBC could leave "messages with 1% of the U.S. population over a two-day period," and the increasing use of low cost Internet services such as VoIP or Internet telephony); PRC at 8–9 (citing an August 10, 2004, CNET article about software that can deliver up to 1,000 synthetic calls every five seconds to Internet Protocol addresses assigned to telephones); NCL at 2–3 (arguing that low cost use of prerecorded messages rather than salespersons and expansive reading of 'established business relationship' will result in increase of telemarketing calls); see also, e.g., Allan, A., No. OL–103079; United States Senate, No. OL–113862 at 3; Bates, J., No. OL–100012; Fisher, B., No. OL–109494; Watson, B., No. 108960.

[85] E.g., Anderson, No. OL–106320 ("E-mail spam is killing e-mail for legitimate business communication and phone spam would do the same for telephone communications."); Kislo, No. OL–102924 ("Such a modification would change telemarketing rules in such a radical fashion, you risk bringing the 'e-mail spam' problem to the telephones across the US."); Malone, S., No. OL–107630 (objecting to FTC proposal to allow "pre-recorded 'spam blitzes'"); Miller, No. OL–103424 ("Left unchecked (as I believe it is today) the phone system will become much like e-mail, 80% spam.").

[86] See note 54, *supra*.

[87] S. Rep. No. 102–178, at 10 (1991).

[88] E.g., *Frisby* v. *Schultz*, 487 U.S. 474 (1988); *Rowan* v. *U.S. Post Office Dep't*, 397 U.S. 728 (1970).

[89] Several industry comments inconsistent with this rationale argue that because the burden of proof of an established business relationship would fall on the seller, no new enforcement concerns would be created by a safe harbor for prerecorded calls. As these comments reflect, the industry recognizes that the burden of this affirmative defense rests on sellers and telemarketers to prove that the seller has an established business relationship with the party called, 16 CFR 310.4(b)(1)(iii)(B)(ii), just as in the express written agreement exception, 16 CFR 310.4(b)(1)(iii)(B)(i), and the Do Not Call safe harbor, 16 CFR 310.4(b)(3).

less of an incentive to self-regulate the number of prerecorded messages they send to such consumers, because they have no established customer to lose, but only a customer to gain. The likelihood that industry-wide self-restraint would be effective must be assessed with an eye toward the industry's record of compliance with the TSR to date. While overall compliance with the Do Not Call provisions of the TSR is quite good, not all covered entities are complying.[90] The compliance record presents a particular problem with respect to consumer concerns about the breadth of the industry's interpretation of what constitutes an "established business relationship," as the consumer comments and the Commission's law enforcement experience indicate.[91]

This argument also ignores the fact that the cost of conducting live telemarketing campaigns with sales agents, as now permitted by the TSR, is itself a separate, significant check on the number of such campaigns. Thus, it is reasonable to expect that the substantially lower cost of prerecorded message telemarketing (compared to live telemarketing campaigns with sales agents) would significantly increase the use of such campaigns, at least by new entrants and small businesses that lack brand or name recognition. It is no less reasonable to predict that, as new digital technologies further reduce the cost of prerecorded telemarketing, the volume of prerecorded calls will increase. The record indicates that new digital technologies, including VoIP, are likely to reduce the cost of transmitting prerecorded telemarketing messages by telephone dramatically, if not to "essentially zero," in the foreseeable future.[92] As the costs decrease, the economic incentives to increase the use of prerecorded telemarketing messages for advertising will multiply, increasing the flow of prerecorded messages consumers receive in their homes.

Thus, there is no apparent rationale for according special treatment to prerecorded telemarketing calls to established customers. Nevertheless, there remains the industry contention that failure to adopt the proposed safe harbor would be contrary to the mandate of the Do Not Call Implementation Act ("DNCIA"),[93] because FCC regulations permit certain prerecorded telemarketing calls, even though the DNCIA directed the FCC to maximize the consistency of its Do Not Call regulations with the FTC's TSR.[94]

When the FCC first promulgated its regulations under the TCPA in 1992, that agency recognized that the TCPA did not exempt prerecorded calls to a consumer who has an established business relationship with a seller.[95] In adopting regulations prohibiting virtually all prerecorded message telemarketing calls where the called party has not given "prior express consent" to receive such calls, the FCC nonetheless elected to create an "established business relationship" exemption from that prohibition.[96] The FCC explained that, in its view, a "solicitation can be deemed invited or permitted by a subscriber in light of the business relationship,"[97] that requiring "prior express consent" would "significantly impede communications between businesses and their customers," and thus, that a "solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests."[98] In updating its regulations in 2003 to comply with the DNCIA, the FCC elected to retain the exemption, stating that "[t]he record reveals that an established business relationship exemption is necessary to allow companies to contact their existing customers."[99]

As a result, the relevant provisions of the FCC rules and the TSR differ to the extent that the FCC rules permit

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[90] From December 31, 1995 until March 25, 2003, the Commission brought 162 cases against telemarketers alleging violations of the TSR. Since March 31, 2003, the effective date of the amended TSR, 24 cases alleging violations of the TSR's Do Not Call provisions, and another 37 cases alleging other TSR violations by telemarketers have been brought by the Commission or the Department of Justice at the Commission's request. E.g., *FTC* v. *Universal Premium Serv.*, No. 06–0849 (C.D. Cal. entered Feb. 21, 2006) (*ex parte* TRO entered to halt alleged TSR violations in "WalMart Shopping Spree Scam" involving continuing calls to consumers who had asked to be placed on the seller's company-specific Do Not Call list); *United States* v. *DirecTV, Inc.*, No. SACV05–1211 (C.D. Cal. filed Dec. 12, 2005) ($5.3 million civil penalty settlement for alleged TSR violations in making calls to consumers on the Registry, and for allegedly assisting a telemarketer in making prerecorded telemarketing calls that violated the call abandonment safe harbor).

[91] In *United States* v. *Columbia House Co.*, No. 05C–4064 (N.D. Ill. filed July 14, 2005), the Commission obtained a $300,000 civil penalty settlement for alleged calls to tens of thousands of numbers on the Registry. Although the defendant claimed an "established business relationship" with the consumers it called, the Commission alleged, after investigation and analysis, that most were calls to consumers who last made a purchase from the defendant far outside the prior 18-month period during which the exemption would have applied, and that other calls were made to consumers who had previously instructed the company not to call them.

[92] E.g., Mari-Len de Guzman, Spam may be a future threat to VoIP, Computerworld, Sept. 7, 2005, at 2, available at *http://www.computerworld.com/networkingtopics/networking/story/0,10801,104442,00.html* (citing Spam over Internet Telephony (SPIT) as a growing concern for VoIP users because technology would allow artificial messages to be sent to 30,000 IP phones in a second and costs would be "*essentially* zero") (emphasis added); Associated Press, *Voice Over Internet Use Soaring*, Yahoo! News, Mar. 1, 2006, available at *http://www. ladlass.com/ice/archives/010819.html* (reporting that the number of users of Internet telephone services tripled in 2005, jumping from 1.3 million users of VoIP to 4.5 million); Deborah Solomon, AARP's *Antagonist*, N.Y. Times Magazine, Mar. 13, 2005, at 23 (explaining how automated telephone messages are "extraordinarily inexpensive" and efficient, and citing, as an example, calling every household in North Dakota in just four hours for $10,000); *VoIP to Open Door for Flood of Overseas Telemarketing*, VoIPNEWS, May 17, 2005, *http://web.archive.org/eb/20050316232140/www.voip-news.com/art/6q.html* (citing Burton Group analyst Fred Cohen who predicts that "the average enterprise or household could see as much as 150 calls a day" from telemarketers using VoIP based in part on the price of Internet telephony which has cut costs by a factor of 100).

[93] Public Law No. 108–10, 117 Stat. 557 (2003). A related argument asserted in some industry comments, that Congress gave exclusive jurisdiction to the FCC to regulate the use of automated dialing and announcing devices, has been rejected by each court that has considered the question. *Mainstream Mktg. Servs.* v. *FTC*, 358 F.3d 1228, 1237, 1259 (10th Cir.), cert. denied, 543 U.S. 812 (2004); *Nat'l Fed'n of the Blind* v. *FTC*, 420 F.3d 331, 337 (4th Cir. 2005), cert. denied, 126 S.Ct. 2058 (2006); see also *Broad. Team, Inc.* v. *FTC*, 429 F.Supp.2d 1292, 1301–02 (M.D. Fla. 2006), appeal docketed, No. 06–13520–EE (11th Cir. June 23, 2006).

[94] Section 3 of the DNCIA directed that "the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b))" in issuing the 2003 FCC Order to implement and enforce the Do Not Call Registry.

[95] 1992 FCC Order, 7 FCC Rcd 8752, ¶ 34. In fact, the TCPA states that Congress has found that "residential telephone subscribers consider automated or prerecorded telephone calls * * * to be a nuisance and an invasion of privacy," and that "[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call * * * is the only effective means of protecting telephone consumers from this nuisance and privacy invasion." TCPA, Pub. L. No. 102–243, 105 Stat. 2394 (1991) at §§ 2(10) and (12).

[96] 47 CFR 64.1200(a)(2)(iv). The only requirements are that the prerecorded message must clearly identify the business responsible for initiating the call and provide, "during or after the message," a telephone number that consumers can call during normal business hours to make a company-specific Do Not Call request. 47 CFR 64.1200(b).

[97] 1992 FCC Order, 7 FCC Rcd 8752, ¶ 34. But cf., Telecom Decision, CRTC 2004–35, ¶ 111 (in which the Canadian Radio-Television and Telecommunications Commission declined to create an established business relationship exemption for prerecorded telemarketing calls on the ground that "when a consumer purchases a service or product from a company * * * there is no 'implied consent' as a result of that purchase to receive future solicitations").

[98] 1992 FCC Order, 7 FCC Rcd 8752, ¶ 34.

[99] 2003 FCC Order, 68 FR at 44165. In comments filed with the FCC during the rulemaking it conducted pursuant to the DNCIA, the FTC specifically urged the FCC to eliminate this discrepancy, as the FCC's ruling acknowledged. 2003 FCC Order, 18 FCC Rcd 14014, 14109, ¶ 156 & n.556. However, the FCC declined to conform its prerecorded message rules to the FTC's TSR, with no explanation except that the "current exception is necessary to avoid interfering with ongoing business relationships." *Id.* at 95.

prerecorded calls where the seller has an established business relationship with the party called, and the TSR's call abandonment prohibition does not.[100] While regulatory uniformity may be a laudable goal, it is not a sufficient basis for conforming the TSR to the FCC's regulations given the Congressional mandate that the Commission's Telemarketing Act regulations prohibit abusive telemarketing calls—and particularly given the lack of support in the record for exempting such calls from the Rule's prohibition.[101] In sum, the record does not establish a rationale that would warrant special treatment for prerecorded message telemarketing when directed to consumers with whom the seller has an established business relationship.

An additional consideration articulated in the record supports the Commission in its conclusion not to adopt the new safe harbor VMBC sought: the potential of such a change to undermine the effectiveness of the National Do Not Call Registry. There can be no question that public support for the Do Not Call Registry is overwhelming and widespread. As of September 1, 2006, consumers had registered more than 130 million telephone numbers, choosing to "opt in" to the protection provided by the Registry to keep unwanted telemarketing calls from invading and disturbing the privacy of their homes. The importance of the Registry to millions of consumers in preserving personal privacy in their homes cannot be understated or underestimated, as the consumer comments on the record in this proceeding make clear.

Nevertheless, the Commission is mindful of the legitimate interest of businesses in communicating with their established customers. The communication interest in such calls is one reason the TSR expressly permits sellers and telemarketers to make live telemarketing calls to consumers whose telephone numbers are listed on the Registry, provided the seller has an established business relationship with each consumer who is called, or has obtained a written agreement to receive such calls that is signed by the consumer. The safe harbor VMBC requested would have altered the delicate balance the Commission has struck between legitimate, but competing, privacy and communication interests. If a safe harbor that would permit prerecorded telemarketing messages to established customers were created, it seems certain that consumers whose telephone numbers are listed on the Registry would receive some greater number of telemarketing messages than they do now. Although reasonable people may differ on the likely size and scope of that increase, there can be no dispute that it would come at some cost to the privacy of consumers in their homes. Based on the record to date, the concern is a very real one that consumers, to some degree, would return to the same burdensome situation that existed before the Registry, when they were repeatedly having to assert a company-specific Do Not Call remedy that the Commission deemed inadequate for commercial sales solicitation calls when it created the Registry.[102]

Only one issue remains to be considered. In drafting the proposed new safe harbor in response to the VMBC petition, the Commission sought to minimize the potential harms of prerecorded calls to established customers by requiring sellers and telemarketers to provide a prompt opportunity at the outset of the message for customers to assert a company-specific Do Not Call request. The Commission specifically endorsed an interactive mechanism that would permit the party called to connect to a sales representative during the message by pressing a button on the telephone keypad. The purpose of this provision was to put recipients of a prerecorded message on an equal footing in asserting their company-specific Do Not Call rights with customers who now receive live telemarketing calls from sales representatives under the TSR's established business relationship exemption.

A majority of both industry and consumer comments on the record have resoundingly rejected this proposal. Most of the sellers and telemarketers who commented on the proposed interactive mechanism objected to it as costly, burdensome, and not widely available.[103] Consumers and their advocates protested that the mechanism would be ineffective because touchtone keypads are not universal,[104] there is no guarantee that a sales representative would be available promptly,[105] and because, in their view, most prerecorded messages end up on answering machines or voice mail services, so that the interactive mechanism would not materially assist consumers in avoiding the costs and encumbrances of asserting their company-specific opt-out rights.[106] No industry or consumer comment proffered a suitable alternative that would serve the same purpose as the interactive mechanism proposed.

In the absence of any mechanism widely acceptable to industry and consumers that would provide recipients of prerecorded telemarketing messages the opportunity to assert their Do Not Call rights "quickly, effectively and efficiently," the Commission does not believe that it can craft conditions for the proposed safe harbor that would preserve the balance between the consumer privacy interests that Congress intended to protect and the interest of sellers and telemarketers in communicating sales and promotional offers to their established customers via prerecorded messages.

It is important to reiterate, however, that many (if not most) of the communications sellers wish to send via prerecorded messages, and that customers wish to receive, are informational communications not governed by the TSR, and thus are not prohibited by its call abandonment provision.[107] It is equally noteworthy that because the proposed new safe harbor would have been predicated on an "established business relationship," sellers would have had an opportunity during their business dealings to obtain the prior written agreement of their customers to receive telemarketing calls that deliver prerecorded messages.[108]

For this and all the other reasons discussed above, the Commission has concluded that, on balance, the record in this proceeding fails to provide the support necessary to justify the proposed additional safe harbor. Accordingly, the Commission has determined not to adopt the proposed amendment, and to deny the VMBC petition. The Commission's Rules of Practice afford VMBC and other sellers and telemarketers the right to seek any advisory opinions they may need to

[100] As noted, the TSR addresses only calls delivering a recorded message when a person answers, as opposed to an answering machine or voice mail system.

[101] The Commission's view might be otherwise if the two sets of regulations were so contradictory that they imposed inconsistent obligations on sellers and telemarketers, but that is not the case here, where compliance with the more restrictive requirements of the TSR does not violate the FCC regulations.

[102] TSR SBP, 68 FR at 4631 ("[T]he company-specific approach is seriously inadequate to protect consumers' privacy from an abusive pattern of calls placed by a seller or telemarketer.").

[103] See note 45, *supra*, and accompanying text.

[104] See note 70, *supra*, and accompanying text.

[105] See note 71, *supra*, and accompanying text.

[106] See note 72, *supra*, and accompanying text.

[107] Examples of informational calls—provided they are not combined with a sales pitch—include calls from an airline notifying consumers about a cancelled flight or a schedule change to a booked flight, or calls from a company notifying consumers about the recall of a purchased product. See notes 29 & 54, *supra*, and accompanying text.

[108] Sellers would have the same opportunity if the amendment discussed in Section II.E, *infra*, is adopted.

clarify the types of prerecorded informational messages that are not covered by the TSR, and thus are not prohibited.[109]

Additionally, the Commission has decided, based on the record in this proceeding, to propose an amendment of the TSR, pursuant to § 3(a)(3)(A) of the Telemarketing Act,[110] to add an express prohibition against unsolicited prerecorded telemarketing calls, unless the seller has obtained a consumer's express prior written agreement to receive such calls. In so doing, the Commission also seeks to address the criticism, encountered by FTC staff in providing industry guidance, that the text of the TSR does not straightforwardly address prerecorded message telemarketing, and instead places the burden on industry members and their legal advisors to divine that the call abandonment provisions effectively bar this practice (except for the very restricted use of recorded messages in the call abandonment safe harbor). The Commission continues to think that the plain language of the call abandonment provision itself prohibits calls delivering prerecorded messages when answered by a consumer, a position it has repeatedly stated,[111] and that has been accepted by at least one court.[112] However, the Commission believes that it might be beneficial to make the prohibition more prominent by adding a provision that makes explicit the prohibition on telemarketing calls delivering prerecorded messages (while clarifying that the call abandonment safe harbor continues to allow the use of prerecorded messages in very limited circumstances).

This record demonstrates that the overwhelming majority of consumers consider prerecorded telemarketing calls a particularly "coercive or abusive" infringement on their right to privacy.[113] Nevertheless, the Commission believes that all interested parties should be afforded an opportunity to comment on the proposed prohibition, and will base its final decision on the full record of comments it receives.

E. Proposed Amendment

Accordingly, the Commission has decided to propose the following addition to the "Pattern of Calls" prohibitions in § 310.4(b)(1) of the TSR, and to invite public comment on the proposal until November 6, 2006. Section 3.10(b)(1) will continue to provide that "It is an abusive telemarketing act or practice and a violation of this rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:" The new subsection would add:

> (v) Initiating any outbound telemarketing call that delivers a prerecorded message when answered by a person, unless the seller has obtained the express agreement, in writing, of such person to place prerecorded calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; *provided, however,* that prerecorded messages permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii) do not require such an agreement.[114]

The purpose of the proposed amendment is to make it explicit that the TSR prevents sellers and telemarketers from delivering a prerecorded message when a person answers a telemarketing call, regardless of whether the call is made to a consumer whose number is listed on the Do Not Call Registry or to a consumer who has an established business relationship with the seller, without the consumer's express prior written agreement.[115] The prohibition contains a proviso that would permit the use of prerecorded messages required by the call abandonment safe harbor when a telemarketing call is answered by a consumer who cannot be connected to a sales representative.

The proposed amendment barring prerecorded telemarketing calls without a consumer's prior written agreement would make the present prohibition explicit, and would implement the Commission's broad authority under the Telemarketing Act to prohibit abusive telemarketing practices. The Telemarketing Act directs the FTC to "include in [the TSR] a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy."[116]

The consumer comments in this proceeding have made it clear that consumers overwhelmingly consider prerecorded telemarketing calls coercive and abusive of their right to privacy. They find prerecorded calls more coercive and abusive than live telemarketing calls because they are powerless to interact with a recording, either to assert their Do Not Call rights or to request additional information about the product or service offered. Thus, the present record supports a finding that a reasonable consumer would consider prerecorded telemarketing calls coercive or abusive of such consumer's right to privacy, unless the consumer had given his or her express prior written agreement to receive such calls.

The proposed amendment would prohibit only the initiation of a call "that delivers a prerecorded message when answered by a person." The Commission specifically seeks comment on whether the limitation "when answered by a person" is necessary and appropriate or whether the prohibition on prerecorded messages should be extended to calls answered by a voicemail system or an answering machine. For example, the intrusion of a telemarketing call delivering a prerecorded message would seem less disruptive if it arrives when the party called is not home than if it arrives when he or she is at home in the midst of daily activities. Nevertheless, the Commission seeks comment on whether there are other harms when a telemarketing call delivering a prerecorded message is answered by an answering machine or voice mail

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[109] 16 CFR §§ 1.1–1.4.

[110] 15 U.S.C. 6102(a)(3)(A).

[111] E.g., 68 Fed. Reg. at 4644; 69 Fed. Reg. at 67,288; DNCIA Report at 33–34.

[112] *Broad. Team, Inc.* v. *FTC*, 429 F.Supp.2d 1292, 1301–02 (M.D. Fla. 2006), appeal docketed, No. 06–13520–EE (11th Cir. June 23, 2006).

[113] 15 U.S.C. 6102(a)(3)(A); see TSR SBP, 68 FR at 4613.

[114] This proposed language is modeled on existing § 310.4(b)(1)(iii)(B)(i), which permits calls to numbers on the Registry with the consumer's prior written agreement, and is consistent with the call abandonment prohibition in § 310.4(b)(1)(iv). As such, the proposed amendment would permit digital and electronic signatures to the extent recognized by applicable Federal or State contract law. 16 CFR 310.4(b)(1)(iii)(B)(i) n.6; see also TSR SBP, 68 FR at 4608–09.

[115] The proposal would not prohibit placement of prerecorded messages on answering machines of consumers who have listed their number on the Registry if they have an established business relationship with the seller, or on answering machines of consumers who have not listed their numbers on the Registry. The Commission notes, however, that any telemarketing campaign directed at leaving pre-recorded messages on answering machines could still run afoul of the abandoned call requirements of the TSR if calls that are answered by an actual consumer, rather than an answering machine, are not transferred to a sales agent as required by § 310.4(b)(1)(iv) But cf. 47 CFR 64.1200(a)(2) (FCC regulation stating that "[n]o person or entity may *initiate any telephone call to any residential line using an artificial or prerecorded voice* to deliver a message.") (emphasis added).

[116] 15 U.S.C. 6102(a)(3)(A). This directive appears consistent with the previously expressed intent of Congress, as stated in the preamble to the TCPA, that "banning * * * automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call * * * is the only effective means of protecting telephone consumers from this nuisance and privacy invasion." TCPA, Pub. L. No. 102–243, 105 Stat. 2394 (1991) at § 2(12).

service, and whether such harms rise to the level of an intrusion that the "reasonable consumer would consider coercive or abusive of such consumer's right to privacy." [117]

In soliciting comments on the proposed amendment, the Commission again wishes to emphasize that the proposed prohibition will not prevent telemarketers from transmitting prerecorded informational messages to consumers that are not part of a "plan, program or campaign which is conducted to induce the purchase of goods or services or a charitable contribution." With that caveat, the Commission will be interested in comments that address the costs and benefits to industry and to consumers of the proposed amendment, as more fully elaborated in Section VIII below.

F. Revocation of Non-Enforcement Policy Against Prerecorded Telemarketing Calls

In view of the foregoing decision, the Commission will no longer continue the forbearance policy announced in the NPRM on enforcement actions for violation of the TSR's call abandonment prohibition in § 310.4(b)(1)(iv), against sellers or telemarketers that, in conformity with the now-rejected call abandonment safe harbor, place telephone calls delivering prerecorded messages to consumers with whom the seller has an established business relationship. The Commission wishes to emphasize that although many prerecorded informational messages are not covered by the TSR, the TSR does cover (and prohibit) telemarketing calls that deliver prerecorded messages to consumers.[118]

Nevertheless, in order to prevent any reasonably foreseeable hardship for sellers or telemarketers that have relied on the Commission's forbearance policy, the Commission will give such sellers and telemarketers until January 2, 2007 to revise their practices to conform to the TSR, and will take no enforcement action based on calls to consumers with whom the seller has an established business relationship that are placed before that date and that conform to the previously proposed, and now rejected, safe harbor.

III. The DMA Petition

The DMA petition urges a change in the standard of the TSR's existing call abandonment safe harbor in § 310.4(b)(4) for measuring the maximum permissible percentage of answered calls that may be abandoned when a telemarketer is not available. Rather than measuring the three (3) percent maximum "per day per calling campaign," as prescribed in § 310.4(b)(4)(i), to limit "hang ups" and "dead air," DMA asks that the maximum be "measured over a 30-day period."

In adopting the "per day, per campaign" standard for calculating the maximum level of abandoned calls, the Commission stated:

> The 'per day per campaign' unit of measurement is consistent with DMA's guidelines addressing its members use of predictive dialer equipment. Under this standard a telemarketer running two or more calling campaigns simultaneously cannot offset a six percent abandonment rate on behalf of one seller with a zero percent abandonment rate for another seller in order to satisfy the Rule's safe harbor provision. Each calling campaign must record a maximum abandonment rate of three percent per day to satisfy the safe harbor.[119]

DMA's petition conceded that former DMA Guidelines for Ethical Business Practices set a "per day per campaign" standard for the maximum percentage of calls that DMA members could abandon, but emphasized that the Guidelines set a five percent abandonment rate, rather than the three percent rate incorporated in the TSR's safe harbor. However, as the NPRM noted, the petition provided no factual support for DMA's apparent argument that a "per day per campaign" standard would be feasible at a five percent call abandonment rate, but not at three percent.

A. DMA's Rationale for Revising The Safe Harbor

The DMA petition advanced three reasons for modifying the three percent standard: (1) The standard is "virtually impossible" for vendors who run multiple campaigns each day to meet; (2) the California Public Utilities Commission—whose three percent call abandonment rate the Commission cited in adopting the standard—measures abandoned calls on a "per 30-day" basis according to the DMA; and (3) the FTC should defer to the FCC's determination that the call abandonment rate should be measured over a 30-day period, because the issue "lies closer to the core expertise of the FCC than of the FTC." [120]

As the NPRM noted, however, DMA's first argument, the near impossibility for vendors to meet the "per day per campaign" standard when running multiple campaigns each day, suggested that telemarketers engage in precisely the practices that the "per day per campaign" standard was designed to prevent. DMA argued that predictive dialer systems manage call abandonment rates "as an average of all campaigns per day, so it is inevitable that certain logins would end the day at say, 3.1% and other at 2.9%, yet the overall average would still be 3% or less." [121] The DMA petition did not explain why telemarketing systems cannot dynamically maintain a steady level of no more than three percent overall, or could not be modified to keep the abandonment rate below three percent separately for each campaign.

The NPRM rejected the last two arguments in DMA's petition as insufficient to warrant a change in the call abandonment standard. The Commission noted that "compliance with the FTC's more precise standard would constitute acceptable compliance" with both the 30-day standard adopted by California and the FCC, and that court decisions "controvert DMA's argument that the FTC's expertise or legal authority regarding the acceptable level of call abandonment is inferior to that of the FCC." [122]

The NPRM further explained that, in its petition, DMA had provided no information that would tend to counter the foreseeable shortcomings of a 30-day standard that the Commission set forth at length in its DNCIA Report.[123] The potential for a 30-day standard to "enable telemarketers to target call abandonments at certain less valued groups of consumers," and thus "offset a high abandonment rate in low income zip codes and make up the difference by abandoning no calls in affluent ones" led the Commission to adopt the "per day per campaign" standard to reduce "the potential for concentrating abuse by ensuring an even distribution of abandoned calls to all segments of the public." [124]

B. Request for Public Comment and Response

The NPRM sought public comment on the petition, noting that "the Commission is receptive to any factual information that would establish that such a change is warranted," but observing that DMA had "not provided an adequate factual basis that would compel" a modification. The

[117] See discussion of the Commission's authority to prohibit "abusive" practices in the notice of proposed rulemaking for the amended TSR. 67 FR 4493 at 4510 (Jan. 30, 2002).

[118] 16 CFR § 310.2(cc).

[119] TSR SBP, 68 FR at 4643 (footnotes omitted).

[120] DMA petition at 3, available at *http://www.ftc.gov/os/2004/10/041019dmapetition.pdf.*

[121] *Id.* at 2.

[122] 69 FR at 67291 & n.19.

[123] DNCIA Report at 31.

[124] 69 FR at 67291.

Commission emphasized that it was particularly interested in three types of information: (1) Any elaboration on the problems telemarketers who are running multiple campaigns at the same time face in attempting to comply with the current requirement; (2) any information demonstrating that telemarketers who make a relatively small number of calls per day may be differentially disadvantaged by the current requirements; and (3) information and data demonstrating that it is unlikely that, if additional flexibility were provided, telemarketers would intentionally set the abandonment rates above 3 percent for some campaigns or calls directed to certain consumers, while setting lower rates of call abandonment for other campaigns or calls in order to stay within the three percent maximum call abandonment rate.

1. Consumer Comments

Comments from some 230 consumers and three consumer advocacy groups addressed issues raised by the DMA petition. All but a smattering of these comments opposed changing the call abandonment standard to a 30-day average across all telemarketing campaigns.[125] Many argued that the DMA did not offer a compelling reason for the change, with at least two noting that the difficulties DMA cited for some telemarketers in meeting the current standard could easily be eliminated by modifying or upgrading their software.[126] Consumer groups expressed continued concern that a 30-day standard would enable telemarketers to target high call abandonment rates at less valued groups of consumers,[127] offsetting the high rates with lower abandonment rates for preferred groups, while a number of consumers were more concerned that the number of abandoned calls would increase on some days or in some campaigns.[128]

2. Industry Comments

Eleven comments from telemarketers, their trade associations and other business trade associations unanimously supported revision of the "per day per campaign" standard,[129] with several echoing the argument that the FTC should defer to the FCC standard,[130] and some contending that there is no evidence that telemarketers would abuse a 30-day standard by discriminating against disfavored groups of consumers.[131] DMA and the American Teleservices Association ("ATA") argued in their joint comment that compliance with the current standard is difficult because the pace of outbound calls placed by predictive dialers is based on the average number of calls answered by consumers, and unexpected fluctuations in the number answered, or the time sales agents spend speaking with consumers, make it difficult to predict the call abandonment rate and ensure compliance, particularly in smaller campaigns, and in campaigns focusing on evening calls at the end of the day.[132]

DMA and ATA explained that predictive dialers base the rate at which they place calls on a projection of the average number of consumers who will answer and the number of sales agents available. The margin of error for these projections, in turn, is a function of the number of consumers to be called. The larger the number of consumers to be called, the smaller the deviation is likely to be from the projected call abandonment rate. Conversely, the smaller the number of consumers to be called, the greater the deviation can be from the desired abandonment rate.[133] Since the projected average answering rate is determined by predictive dialer sampling as calls are made, larger periods of calling time limit the impact of unexpected fluctuations in the answering rate, while shorter periods of time exaggerate their effect. Any unexpected spike in answered calls could, according to DMA and ATA, "make it impossible to recover within the same day based upon such a small time frame of calling."[134]

For these reasons, DMA and ATA argued that the present "per day per campaign" standard inhibits the use of smaller, "segmented" lists of fewer than 15,000 names that target consumers most likely to be interested in an offer.[135] This disadvantages consumers, the comment contended, by making it more likely they will receive calls about sales offers in which they have no interest, and also particularly disadvantages small business sellers with small clienteles, as well as the smaller telemarketing companies that serve them.[136] DMA also asserted that the Commission significantly increased the compliance burden for small business users of segmented lists, given the difficulties of predicting abandonment rates with shorter calling lists, by setting the safe harbor call abandonment rate at three percent, rather than the five percent figure in DMA's former guidelines, with the result that predictive dialer economic "efficiencies disappear almost entirely."[137]

DMA and ATA further argued that "[t]he actual number of abandoned calls would not increase if the measurement

[125] Three of ten consumers who supported a change suggested limiting it to 30-days "per calling campaign," with two of them proposing reducing the period further to "the lesser of" 30 days or the duration of a specific campaign. McCorvey, No. OL–104248 ("As an engineer, I recognize the possibility that various causes outside the control of the marketing organization may make it difficult for them to ensure compliance when measured across a very narrow time span. This expansion of the compliance window would not (in my opinion) create any real opportunity for abuse ONLY if it is tied to each campaign. Therefore, wording of the form 'measured over a 30-day period per campaign' would be both fair, practical and provide continued protection for consumers."); Kaufmana, No. OL–102724 ("I would recommend the changed phrase to be 'measured over a 30-day period or the calling campaign, whichever is less.' "); Zajonc, No. OL–102790 ("I'm not against the 30-day provision for 3% abandonment, though I would probably shrink it, or have it be the lesser of 30 days or a specific campaign."). See also Tukey, D, PhD, No. OL–104725 ("I understand the nature of statistical fluctuation, so it seems a longer time period is not out of order."); Yamane, No. OL–101436 ("[A] 30-day period seems less of a problem, although it does seem to make abuses of the system more likely by providing a larger window over which abuses can be measured."); cf. Holm, M., No. OL–100438 ("If this is merely a technical change * * * then I am not opposed."); Frye, T., No. OL–106806; VanDusen, No. OL–113869; Thornton, No. OL–111679; Cummings, No. OL–113849.

[126] E.g., Argyropoulos, No. OL–102968 at 3; Protigal, No. 000010 at 11.

[127] NCL at 5–6; PRC at 10; EPIC at 14.

[128] E.g., Bullard, No. OL–101198; Kislo, No. OL–102924; Ripple, No. OL–101379; Giuliani, No. OL–108532.

[129] E.g., DMA at 2; American Teleservices Ass'n., No. 000058 at 3; VMBC at 15; Heritage at 3; U.S. Chamber at 7; Infocision at 6 (advocating a 30-day standard for each separate campaign, while all other industry comments supported DMA's proposal for an overall 30-day standard for all of a telemarketers's concurrent campaigns).

[130] DMA at 8; VMBC at 15; Infocision at 6; U.S. Chamber at 7.

[131] Infocision at 5; DMA at 8; *see* U.S. Chamber at 8.

[132] DMA at 3–4; U.S. Chamber at 8.

[133] This follows, according to DMA and ATA, from "a bedrock principle of statistical analysis that the smaller the size of the sample, the larger the standard deviation and sampling errors." DMA at 3; see also, U.S. Chamber at 8 (" In general, the smaller the list or the smaller the campaign (or the fewer days over which the call abandonment rate is measured), the more likely that the abandonment rate may deviate from the targeted rate of three percent.").

[134] DMA at 4.

[135] DMA and ATA not that "some" predictive dialers require callings lists of "approximately 15,000 names" and "at least 7 or 8 telemarketing agents for any one program" to meet the current "per day per campaign" standard. DMA at 5.

[136] DMA at 4; *see also*, U.S. Chamber at 8 ("In particular, the current test for call abandonment in the TSR inflicts a disproportionate harm on smaller businesses. Smaller businesses have smaller calling lists; one consequence of this is that a small business may inadvertently exceed the three percent figure comparatively quickly. To stay within the limits, the small business must recalibrate its dialing equipment, hire more sales representatives (which could cost overtime rates under the per day test), or risk violating the law."); VMBC at 15–16; Visa at 3.

[137] DMA at 6.

occurs on a 30-day basis rather than per day per campaign." [138] In fact, they noted, if a telemarketer's call abandonment rate were to exceed three percent on any given day under the current standard (e.g., due to an unexpected spike in answered calls at the end of the day), there may be more abandoned calls than if the telemarketer had 30 days to correct for the unexpected increase in call abandonments on that day. For the same reason, DMA and ATA contended that the "per day per campaign" standard is more likely to force sellers and telemarketers to discriminate between different groups of consumers than a 30-day standard. This is because, if the call abandonment rate unexpectedly exceeds three percent on any given day, the telemarketer could attempt to compensate by calling phone numbers less likely to be answered by a consumer, but also less likely to belong to a consumer interested in the product or service being offered. With a 30-day standard, DMA and ATA argued, there would be no need nor incentive for telemarketers to discriminate in the distribution of abandoned calls.[139]

Finally, DMA and ATA asserted that the TSR's protection of consumers would not otherwise be diminished if the 30-day standard were adopted because of other protections provided to consumers when the TSR was amended in 2003. They pointed out that consumers can: (1) Place their numbers on the national Do Not Call Registry; (2) assert company-specific Do Not Call requests; and (3) use Caller ID to find out the names of telemarketers that have abandoned calls to their telephone numbers.[140]

Two of the industry comments appeared to acknowledge that it is technically possible to configure predictive dialers to comply with the current standard.[141] Both argued, however, that compliance with the current standard is costly and burdensome. One reported that "[o]n a daily basis, campaigns must be shut down and managed in a manual mode to ensure compliance with this overly burdensome requirement," and as a result, "[e]fficiency is destroyed and the resulting increase in costs has made many programs no longer cost-effective." [142] The other asserted that "having the freedom to run a higher abandonment rate at times when customers are less likely to be home (such as 8 a.m. to 5 p.m.) and lowering it when people are more likely to be home (such as 6–9 p.m.) would make an outbound campaign more efficient," noting that "[w]hile this approach could theoretically be used under the three percent per campaign per day system, it would be far more difficult to manage without significantly risking being over the three percent threshold." [143]

C. Analysis of the Comments, Discussion and Conclusion

As discussed above, the Commission adopted the call abandonment provision of the TSR to prevent the abusive practice of "dead air" calls and "hang-ups." The safe harbor exception to the call abandonment prohibition was designed to minimize this abuse, while allowing the telemarketing industry to benefit from the economies provided by predictive dialer technologies. In attempting to strike an appropriate balance between consumer and industry interests, the Commission adapted DMA's "per day per campaign" guideline when it established the three percent call abandonment ceiling as an element of the § 310.4(b)(4) safe harbor.

It appears from the record, however, that the impact of the three percent "per day per campaign" call abandonment limit may be disturbing the balance the Commission sought to achieve by frustrating the full realization of the potential economies provided by predictive dialers, particularly with respect to the use of segmented lists. The comments suggest that this unintended consequence may be having an adverse effect on small business sellers and telemarketers in particular, by increasing the costs of their telemarketing, and in some instances making telemarketing campaigns using small, segmented lists prohibitively expensive.

The record also shows that many consumers regard their home as their castle, and vehemently object to receiving what they regard as uninvited telemarketing calls. Their comments give eloquent testimony to the fact that consumers despise "dead air" and "hang ups" even more than telemarketing, and that many believe they should not receive any telemarketing calls at all when they have chosen to place their home telephone number on the Do Not Call Registry, regardless of whether they have an established business relationship with the seller who calls. While this popular view of the Registry may be widespread, as the record reflects, it overlooks the fact that in establishing the Registry, the Commission expressly authorized live telemarketing calls to consumers who have an established business relationship with the seller on whose behalf the calls are made, provided they have not asserted a company-specific Do Not Call request.[144]

The comments also illustrate consumer concern that any loosening of the current standard would enable telemarketers to target disfavored groups of consumers with a disproportionate share of abandoned calls, even though the total number of abandoned calls for any calling list would not exceed three percent if the standard were modified.[145] For its part, the industry apparently cannot and does not deny that this offensive practice may be more likely to occur if a change were made to a 30-day average for all campaigns. It is left to argue the good faith of trade association members, and the absence of empirical evidence that such an abusive practice has occurred in the past, notwithstanding the existence of economic incentives that seem likely to promote the abuse. At the same time, the Commission does not take the

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[138] In theory, if a list of 240,000 telephone numbers were called at the rate of 24,000 a day for 10 days, the three percent maximum would be 720 abandoned calls a day (.03 × 24,000 = 720), or 7200 for 10 days, which is three percent of 240,000 (.03 × 240,000 = 7200).

[139] DMA and ATA agreed that " there should not be a group of 'less valued' consumers that receive a larger rate of abandoned calls," and insisted that "our members do not engage in such tactics," but appeared tacitly to acknowledge that there is nothing in the 30-day standard they advocate that would necessarily prevent such an offensive practice. DMA at 7. Another industry comment objected that there has never been any evidence that telemarketers target less favored consumers with higher call abandonment rates. Infocision at 5.

[140] Another comment noted that the Caller ID requirement should allay any concerns of elderly consumers that abandoned calls were precursors of home burglaries. Heritage at 3 n.2.

[141] Heritage at 3; Infocision at 5–6 ("Yes, the technology allows controls to be placed on the algorithms determining the speed at which the system dials. It is possible to maintain a steady level but it is not an exact science."). Both stated, however, that while they can comply with the present standard, a 30-day standard would permit greater efficiency and flexibility in their telemarketing campaigns.

[142] Infocision at 5.

[143] Heritage at 3.

[144] TSR SBP, 68 FR at 4633–34. The Commission established a limited exemption balancing the privacy needs of consumers and the need of businesses to contact their current customers, noting: Industry comments were nearly unanimous in emphasizing that it is essential that sellers be able to call their existing customers. Although the initial comments from consumer groups opposed an exemption for 'established business relationships,' * * * their supplemental comments expressed the view that such an exemption would be acceptable, as long as it was narrowly-tailored and limited to current, ongoing relationships. * * * 60 percent of consumers * * * stated that they opposed an exemption for 'established business relationship,' [although] 40 percent favored such an exemption.

[145] The total number of abandoned calls might increase slightly, however, because telemarketers may have had to set their predictive dialers below three percent to meet the present "per day per calling campaign" standard.

industry argument lightly that the "per day per campaign" standard may be more restrictive than intended, given the limitations of predictive dialers in adjusting to unexpected spikes in average call abandonment rates. The record shows that particular problems arise in connection with the use of smaller, segmented lists that are the most economical for small businesses and the most useful in targeting only those consumers most likely to be interested in a particular sales offer. As a result, the Commission is inclined to believe that an amendment of the present standard may be warranted.

D. Proposed Amendment

Accordingly, the Commission has decided to propose the following substitute for the present "per day per campaign" standard in § 310.4(b)(4)(i), and to invite public comment on the proposal until November 6, 200€:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

The proposed amendment is limited, in accordance with the suggestions of the supportive consumer comments and an industry comment, by requiring that the three percent ceiling be met separately by each of a seller's or telemarketer's calling campaigns. The Commission believes such a limitation is important to prevent sellers and telemarketers from running multiple campaigns with what could be significantly different call abandonment rates that together average only three percent over a 30-day period. Allowing the flexibility that DMA proposed would more likely create incentives for a seller to ensure that its most favored customers experience lower call abandonment rates, thus preserving their goodwill, at the cost of less favored customers. Thus, the Commission's proposal is designed to reduce the potential for discriminatory treatment of disfavored consumer groups by subjecting them to higher than average call abandonment rates.

Because the proposal would measure call abandonment on a "per campaign" basis, it must account for the possibility that a campaign may continue for less than 30 days, or for more than 30 days. The proposal would accomplish this, and provide needed certainty to sellers and telemarketers, by specifying that the call abandonment rate will be measured over the duration of the campaign. If the campaign continues for less than 30 days, the call abandonment rate must be at or below three percent for the duration of the campaign; if it continues for more than 30 days, the three percent ceiling must be measured separately for each successive 30-day period during which the campaign is conducted. If the campaign continues for more than 30 days, but less than an additional 30-day period, the three percent maximum would be measured both for the initial 30-day period, and separately for the remaining period of less than 30 days.

In inviting public comment on this proposal from interested parties, the Commission wishes to emphasize that it has not yet reached any final conclusion on whether or not to amend the present "per day per campaign" standard, although it is inclined to do so on this record. That ultimate decision will be informed by the public comment received on the proposed amendment.

IV. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the amendments proposed in this notice. Written comments must be submitted on or before November 6, 2006. Comments should refer to: "TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification, Project No. R411001" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[146] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *http://secure.commentworks.com/ftc-tsr* Web site. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. 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 Web site, to the extent practicable, at *http://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 Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, which is available at *http://www.ftc.gov/ftc/privacy.htm.*

V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

VI. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501–3502, the Office of Management and Budget ("OMB") approved the information collection requirements in the TSR and assigned OMB Control Number 3084–0097. The proposed rule amendments, as discussed above, would explicitly prohibit all prerecorded telemarketing calls answered by a person without a written agreement signed by the consumer to receive such calls, and alter the standard for measuring the three percent call abandonment rate permitted by the TSR's call abandonment safe harbor.

The proposed amendment explicitly limiting the use of prerecorded telemarketing calls will not change the existing paperwork burden on sellers or telemarketers. It simply makes the TSR's existing prohibition explicit rather than imposing a new prohibition. Thus, the proposed amendment will, if anything, reduce the paperwork burden and the amount of time required for telemarketers to comply with the TSR. In addition, an FCC regulation prohibiting prerecorded calls has been in effect since 1992, following the enactment of the TCPA.[147] The FCC regulation prohibits prerecorded calls delivering unsolicited advertisements or

[146] Commission 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.

[147] 47 CFR 64.1200(a)(2).

telephone solicitations to residential telephones unless, *inter alia*, the caller has an "established business relationship" with the person called, or has obtained that person's "prior express consent" to receive such calls.[148] The proposed TSR amendment therefore will not change the paperwork burden created by the pre-existing FCC regulation.

Nor will the proposed change to the standard for measuring the three percent call abandonment rate substantially affect the existing paperwork burden. The present "per day per campaign" standard requires sellers and telemarketers to establish recordkeeping systems evidencing their compliance, and the proposed amendment may lessen this burden slightly because it relaxes the current requirement.

Thus, the proposed amendments would not impose any new or affect any existing reporting, recordkeeping, or third-party disclosure requirements that are subject to review by OMB under the PRA.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601–12, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. §§ 603–05.

The Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule amendment on small entities. Therefore, the Commission has prepared the following analysis.

A. Reasons for the Proposed Rule Amendment

The proposed explicit prohibition of all prerecorded telemarketing calls answered by a person without the consumer's express prior written agreement, discussed in Section II.E above, implements the Telemarketing Act requirement that the Commission prohibit a pattern of unsolicited telephone calls that "the reasonable consumer would consider coercive or abusive of such consumer's right to privacy," and effectuates the apparent intent of Congress in the TCPA to prohibit prerecorded telemarketing calls.

The proposed modification of the TSR's call abandonment provision, discussed in Section III.D above, would modify the existing safe harbor to allow sellers and telemarketers to measure the three percent maximum call abandonment rate prescribed in § 310.4(b)(4)(i) for a single calling campaign over a 30-day period. The Commission proposes to revise the standard to permit measurement of the three percent maximum "over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues."

B. Statement of Objectives and Legal Basis

The objectives of the proposed rule amendments are discussed above. The legal basis for the proposed rule amendment is the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101–6108.

C. Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Each of the proposed rule amendments will affect sellers and telemarketers that make interstate telephone calls to consumers (outbound calls) as part of a plan, program or campaign which is conducted to induce the purchase of goods or services or a charitable contribution. For the majority of entities subject to the proposed rule, a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or that has fewer than 500 employees.[149]

The Commission has not previously requested comment on an explicit prohibition of all prerecorded telemarketing calls answered by a person without the consumer's express prior written agreement, but believes that the impact of the proposal on small business sellers and telemarketers would be *de minimis* because such calls are currently prohibited by the TSR's call abandonment provision. Based on the absence of available data in this and related proceedings, the Commission believes that a precise estimate of the number of small entities that would be subject to the proposal is not currently feasible, and specifically requests information or comment on this issue.

In the proceedings to amend the TSR in 2002, the Commission sought public comment and information on the number of small business sellers and telemarketers that would be impacted by amendment of the standard for measuring the three percent call abandonment rate. In its request, the Commission noted the lack of publicly available data regarding the number of small entities that might be impacted by the proposed Rule.[150] The Commission received no information in response to its requests.[151]

Likewise, neither the petition to amend the call abandonment safe harbor to expand the period over which the three percent call abandonment ceiling for live telemarketing calls is calculated, nor the industry comments on that issue, provide any data regarding the number of small entities that may be affected by the Commission's ultimate determination.[152] Based on the absence of available data in this and related proceedings, the Commission believes that a precise estimate of the number of small entities that fall under the proposed rule is not currently feasible, and specifically requests information or comment on this issue.

[148] Thus, under the FCC regulation, it is unlawful for a seller or telemarketer to place a prerecorded call to a residential telephone unless it can show compliance with one of the two exemptions. The "prior express consent" requirement, in particular, imposes essentially the same recordkeeping burden as the proposed amendment. Moreover, in adopting regulations to implement the Do Not Call Registry pursuant to the DNCIA, the FCC determined that sellers must obtain a written agreement signed by a consumer whose number is listed on the Registry to satisfy the "prior express consent" requirement. 2003 FCC Order, 18 FCC Rcd. at 14043–44, ¶ 44. Although the FCC subsequently concluded that an oral consent would suffice to authorize calls to consumers whose numbers were not listed on the Registry, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02–278, Second Order on Reconsideration, 20 FCC Rcd. 3788 (2005), sellers or telemarketers still must create records evidencing any such oral consent because the caller bears the burden of demonstrating that prerecorded calls are lawful. See *In re* Septic Safety, Inc., 20 FCC Rcd. 2179 (2005); *In re* Warrior Custom Golf, Inc., 19 FCC Rcd. 23648 (2004).

[149] These numbers represent the size standards for most retail and service industries ($6 million total receipts) and manufacturing industries (500 employees). A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/size/summary-whatis.html.*

[150] See TSR SBP, 68 FR at 4667 (noting that Census data on small entities conducting telemarketing does not distinguish between those entities that conduct exempt calling, such as survey calling, those that receive inbound calls, and those that conduct outbound calling campaigns. Moreover, sellers who act as their own telemarketers are not accounted for in the Census data.).

[151] *Id.*; see also 68 FR 45134, 45143 (July 31, 2003) (noting that comment was requested, but not received, regarding the number of small entities subject to the National Do Not Call Registry provisions of the amended TSR).

[152] Although industry comments have argued that the proposed revision would remove an obstacle to small business compliance with the call abandonment safe harbor, as discussed in Section III, *supra*, none of the comments has addressed the number of small businesses that might benefit from revision of the current standard.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The proposed rule amendment explicitly prohibiting prerecorded telemarketing calls answered by a person unless the consumer has agreed in writing to accept such calls will affect the TSR's recordkeeping requirements insofar as it would compel regulated entities to keep records of such agreements under the general recordkeeping requirements of the existing rule.[153] It appears, however, that there should be no change in this burden since regulated entities, regardless of size, already should be maintaining records of such agreements in the ordinary course of business in order to demonstrate compliance with existing FTC and FCC restrictions on prerecorded calls, as explained in the prior Paperwork Reduction Act discussion. Likewise, the prerecorded calls amendment would not impose or affect any new or existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the Paperwork Reduction Act.

In addition, the Commission does not believe that the proposal to expand the period over which the three percent call abandonment ceiling for live telemarketing calls is calculated will create any new burden on sellers or telemarketers, because the existing "per day per campaign" standard of the TSR has already required them to establish recordkeeping systems to demonstrate their compliance. The Commission also does not believe that this modification of the Rule will increase or otherwise modify any existing compliance costs, and may in fact reduce them for small entities that are able to take advantage of the revised safe harbor requirement.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

The FTC is mindful that the proposed TSR amendment explicitly prohibiting all prerecorded telemarketing calls answered by a person without the consumer's express prior written agreement differs from the FCC's regulations and some State laws, which permit sellers to place such calls to consumers who have given their prior express consent or to consumers with whom the seller has an "established business relationship."[154] However, the Commission does not believe that an explicit prohibition would conflict with the FCC regulations or similar State laws, because compliance with the TSR's present prohibition does not violate those more permissive standards.

Except as indicated below, the FTC has not identified any other Federal or State statutes, rules, or policies that would overlap or conflict with the proposed revision of the call abandonment safe harbor. The proposed amendment would help to reduce the differences on this issue between the TSR and the FCC's TCPA rules, as well as similar state requirements.[155] As explained in Section III above, compliance with the FTC's more precise standard would constitute acceptable compliance with the FCC rule and similar state requirements, so there is no conflict between these regulations.

F. Discussion of Significant Alternatives to the Proposed Rule That Would Accomplish the Stated Objectives and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The proposed amendment to add an explicit prohibition of all prerecorded telemarketing calls answered by a person without a consumer's express prior written agreement would implement the requirement in the Telemarketing Act that the Commission prescribe rules that include a prohibition against "a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy." The only alternatives to this explicit prohibition would be to continue the present prohibition of prerecorded calls in § 310.4(b)(4)(i), the call abandonment provision, or to permit prerecorded calls, which the Commission has declined to do based on the record in this proceeding to date.

The proposed amendment of the existing call abandonment safe harbor would replace the present requirement that the three percent maximum call abandonment rate be measured "per day per campaign," with a revised requirement that the maximum be measured "over the duration of the campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues." Other regulatory options under consideration include retaining the present "per day per campaign" standard, or, at the other end of the spectrum, requiring that the maximum call abandonment rate be measured over a 30-day period for all of a telemarketer's campaigns. The Commission has yet to be persuaded, however, that this more liberal standard would be as likely as the proposed standard to prevent telemarketers from targeting disfavored consumers with a disproportionate share of abandoned calls.

The explicit prohibition on prerecorded calls and the proposed revision in the call abandonment safe harbor are intended to apply to all entities subject to the Rule, and it does not appear that a delayed effective date for small entities or other alternatives to the current proposal would necessarily result in any further reduction in the compliance burdens of the Rule for small entities. The Commission nonetheless seeks comments and information on what other alternative formulations, if any, of the proposed safe harbor might further minimize compliance burdens for small entities, without compromising the intent and purpose of the Rule to prevent abusive telemarketing practices, including the need, if any, for a delayed effective date for small business compliance.

VIII. Specific Issues for Comment

The Commission seeks comment on various aspects of the proposed amendment to add an explicit prohibition of prerecorded telemarketing calls to the TSR and the proposed amendment to the TSR's call abandonment safe harbor provision. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, comments should include detailed, factual supporting information whenever possible.

A. General Questions for Comment

Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on the Commission's proposal to add an explicit prohibition of prerecorded telemarketing calls and the proposal to measure the maximum allowable call abandonment rate under the existing safe harbor in 16 CFR 310.4(b)(4)(i) "over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues" rather than on a "per day per campaign" basis. Please include answers to the following questions:

1. What is the effect (including any benefits and costs), if any, on consumers?

2. What is the impact (including any benefits and costs), if any, on individual firms that must comply with the Rule?

[153] See 16 CFR 310.5(a)(5).

[154] 47 CFR 64.1200(a)(2)(iv). See also, e.g., Ariz. Rev. Stat., § 44–1278(B)(4) (permitting prerecorded calls with called party's "prior express consent"); Ind. Code, § 24–5–14–5 (permitting prerecorded calls where there is a "current business or personal relationship").

[155] See, e.g., Cal. Pub. Util. Comm'n, Decision 03–03–038 (Mar. 13, 2003), at 19 (adopting the FCC's 30-day standard for measuring call abandonment rates).

3. What is the impact (including any benefits and costs), if any, on industry, including those who may be affected by these proposals but not obligated to comply with the Rule?

4. What changes, if any, should be made to the proposed Rule to minimize any costs to industry, individual firms that must comply with the Rule, and/or consumers?

5. How would each suggested change affect the benefits that might be provided by the proposed Rule to industry, individual firms that must comply with the Rule, and/or consumers?

6. How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

7. How many small business entities would be affected by each of the proposed amendments?

B. Questions on Specific Issues

In response to each of the following questions, please provide: (1) Detailed comment, including data, statistics, consumer complaint information, and other evidence, regarding the issue referred to in the question; (2) comment as to whether the proposed changes do or do not provide an adequate solution to the problems they were intended to address, and why; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on industry:

1. Should the Commission include an explicit prohibition of prerecorded telemarketing calls in the TSR?

2. Is the Commission correct in its understanding that a reasonable consumer would consider prerecorded telemarketing sales calls and prerecorded charitable solicitation calls to be coercive or abusive of his or her right to privacy?

3. Does a consumer's choice not to list his or her telephone number on the Do Not Call Registry indicate not only that he or she is willing to accept live telemarketing calls, but also prerecorded telemarketing calls?

4. Should the Rule specify disclosures that must be made when obtaining a consumer's express written agreement to receive such calls? If so, what disclosures are needed?

5. What is the effect on consumers' privacy interests, if any, of not applying the call abandonment safe harbor requirements to calls left on consumers' answering machines?

6. Are prerecorded messages left on answering machines less intrusive than prerecorded messages answered by a person?

7. What are the costs and benefits to consumers, if any, of allowing companies to leave prerecorded messages, as opposed to live messages, on consumers' answering machines? Do consumers incur additional costs in terms of (a) paying for storage of messages they do not want; (b) exceeding their allotted storage capacity; (c) being unable to receive messages they want or need; (d) being unable to use home telephone lines tied-up by prerecorded messages; or (e) retrieving messages? Do consumers receive additional benefits, such as lower marketing costs that are eventually passed on to them?

8. What are the costs and benefits to companies in not having to apply the call abandonment safe harbor limit to calls left on answering machines?

9. Should a 30-day standard, if adopted, cover all of a telemarketer's campaigns within that period, be limited to a single campaign, or be limited to the duration of each campaign?

10. Are there significant efficiencies that can be obtained with a requirement to meet a 30-day standard averaged across all of a telemarketer's campaigns that cannot be obtained with a 30-day campaign-specific requirement? If so, what are they and what effect do they have?

11. Are there technological problems that limit the ability of telemarketers who are running multiple campaigns to measure abandonment rates separately for each campaign? If so, what are they, how many telemarketers do they affect, what remedies, if any, are available, and what is the cost of such remedies?

12. Are upgrades available that can reduce the rate at which predictive dialers place calls in the case of an unexpected spike in call abandonments, so that it would not be necessary to run them manually?

13. Would retaining a "per campaign" standard, but extending the period over which the call abandonment maximum is measured, make the use of smaller segmented lists by small businesses and other sellers more economical? Please provide specific examples of why or why not.

14. What effect would the proposed change in the standard for measuring the call abandonment rate have on the number of abandoned calls that consumers receive?

15. Do small businesses and other sellers have alternatives that are equally or more effective and economical than live telemarketing, such as postcard or email announcements, to notify their established customers of sales offers and to obtain orders? Would the costs of such alternatives be outweighed by benefits to consumers in avoiding additional abandoned calls to their homes?

IX. Conclusion

For the reasons discussed above, the Commission has decided, on balance, to deny the petition seeking amendment of the TSR to create an additional safe harbor to permit prerecorded telemarketing calls to established customers. The Commission is also proposing an amendment explicitly prohibiting unsolicited prerecorded telemarketing calls without a consumer's express prior written agreement to accept such calls. The Commission will therefore cease its forbearance from considering law enforcement actions against sellers and telemarketers engaged in making prerecorded calls to established customers, after allowing a reasonable time, as specified above, for them to bring themselves into compliance with the TSR.

The Commission has also decided to propose an amendment to the existing safe harbor to permit measurement of the three percent maximum call abandonment rate "over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues." The Commission will accept public comment on this proposal until November 6, 2006.

X. Proposed Rule

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, the Commission proposes to amend title 16, Code of Federal Regulations, as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

2. Amend § 310.4 by adding new paragraph (b)(1)(v), and revising paragraph (b)(4)(i) to read as follows:

§ 310.4 Abusive telemarketing acts or practices.

* * * * *

(b) * * *

(1) * * *

(v) Initiating any outbound telemarketing call that delivers a prerecorded message when answered by a person, unless the seller has obtained the express agreement, in writing, of such person to place prerecorded calls to that person. Such written agreement

shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; provided, however, that prerecorded messages permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii) do not require such an agreement.

* * * * *

(4) * * *

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–8524 Filed 10–3–06; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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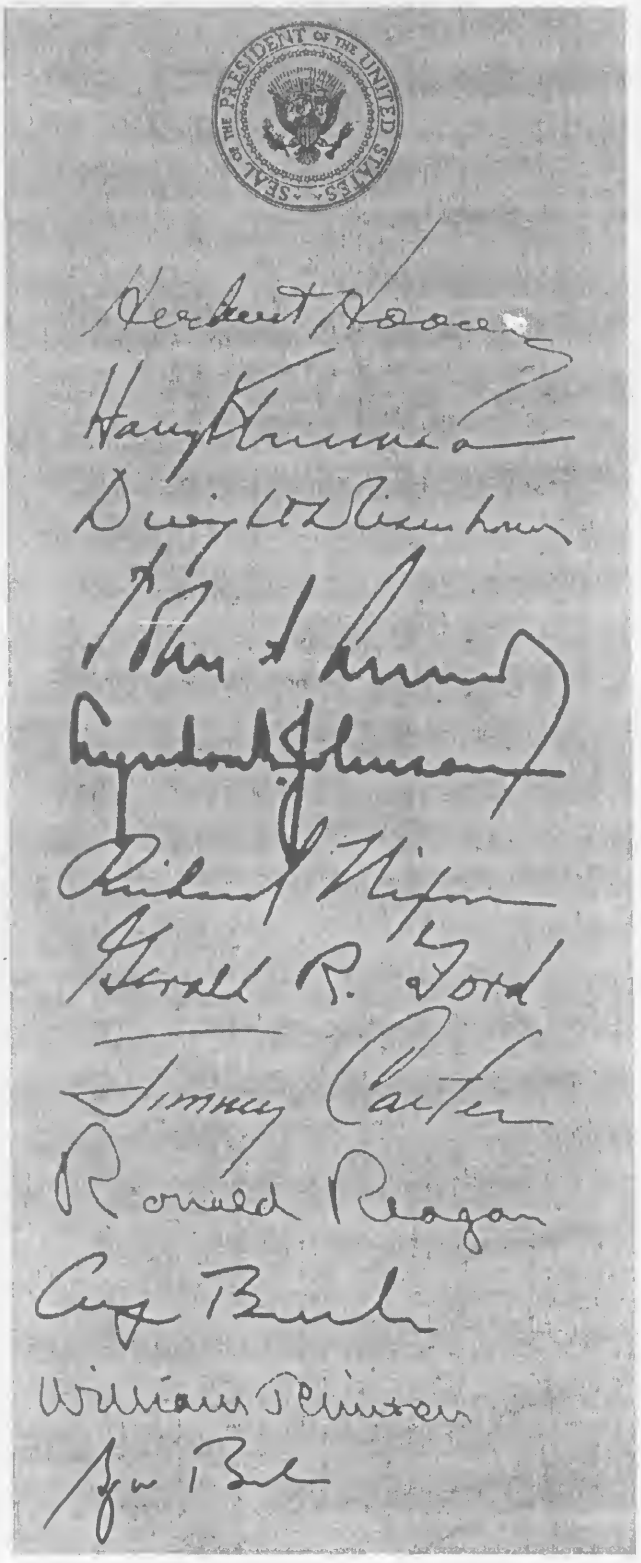

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